

ROXANE ROMANS
JEFF RODGERS vs HERBALIFE LTD

January 24, 2018

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<p>1 UNITED STATES DISTRICT COURT</p> <p>2 SOUTHERN DISTRICT OF FLORIDA</p> <p>3 MIAMI DIVISION</p> <p>4</p> <p>5 JEFF RODGERS, et al.,</p> <p>6 individually and on behalf</p> <p>7 of all others similarly</p> <p>8 situated,</p> <p>9</p> <p>10 Plaintiffs, No. 1:17-cv-23429-MGC</p> <p>11 vs.</p> <p>12</p> <p>13</p> <p>14</p> <p>15 DEPOSITION OF ROXANE ROMANS</p> <p>16 January 24, 2018</p> <p>17 12:00 p.m.</p> <p>18</p> <p>19</p> <p>20 1875 Century Park East, Suite 2300</p> <p>21 Los Angeles, California</p> <p>22</p> <p>23</p> <p>24 Diana Janniere, CSR-10034</p> <p>25</p>	<p>1 APPEARANCES OF COUNSEL</p> <p>2</p> <p>3 For the Individual Defendants:</p> <p>4 QUARLES & BRADY, LLP</p> <p>5 MICHAEL S. CATLETT, ESQ.</p> <p>6 ONE RENAISSANCE SQUARE</p> <p>7 TWO NORTH CENTRAL AVENUE</p> <p>8 PHOENIX, ARIZONA 85004</p> <p>9 602.229.5279</p> <p>10 michael.catlett@quarles.com</p> <p>11</p> <p>12 Also Present:</p> <p>13 PATTI SABEL, V.P., Counsel</p> <p>14 HERBALIFE - LEGAL DEPARTMENT</p> <p>15</p> <p>16</p> <p>17 JASON JONES</p> <p>18 (Appearing Telephonically)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 APPEARANCES OF COUNSEL</p> <p>2</p> <p>3 For the Plaintiffs:</p> <p>4 MARK MIGDAL & HAYDEN</p> <p>5 ETAN MARK, ESQ.</p> <p>6 80 S.W. 8TH STREET, SUITE 1999</p> <p>7 MIAMI, FLORIDA 33130</p> <p>8 305.374.0440</p> <p>9 etan@markmigdal.com</p> <p>10</p> <p>11 MARK MIGDAL & HAYDEN</p> <p>12 LARA O'DONNELL GRILLO, ESQ.</p> <p>13 (Appearing Telephonically)</p> <p>14 80 S.W. 8TH STREET, SUITE 1999</p> <p>15 MIAMI, FLORIDA 33130</p> <p>16 305.374.0440</p> <p>17</p> <p>18 For the Defendant Herbalife Ltd:</p> <p>19 BIRD MARELLA BOXER WOLPERT</p> <p>20 NEISSIM DROOKS LINCENBERG</p> <p>21 MARK T. DROOKS, ESQ.</p> <p>22 GOPI K. PANCHAPAKESAN, ESQ.</p> <p>23 1875 CENTURY PARK EAST, SUITE 2300</p> <p>24 LOS ANGELES, CALIFORNIA 90067</p> <p>25 310.201.2100</p> <p>mdrooks@birdmarella.com</p> <p>gkp@birdmarella.com</p> <p>Co-Counsel for Defendant Herbalife Ltd:</p> <p>KLUGER, KAPLAN, SILVERMAN, KATZEN & LEVINE, P.L.</p> <p>TODD A. LEVINE, ESQ.</p> <p>(Appearing Telephonically)</p> <p>201 S. BISCAYNE BOULEVARD, SUITE 2700</p> <p>MIAMI, FLORIDA 33131</p> <p>305.379.9000</p> <p>tlevine@klugerkaplan.com</p>	<p>1 INDEX OF EXAMINATION</p> <p>2 WITNESS: Roxane Romans</p> <p>3 EXAMINATION PAGE</p> <p>4 By Mr. Mark 6</p> <p>5</p> <p>6 INDEX OF EXHIBITS</p> <p>7 EXHIBIT DESCRIPTION PAGE</p> <p>8 3 DECLARATION OF ROXANE ROMANS IN SUPPORT OF DEFENDANTS' JOINT MOTION TO COMPEL ARBITRATION 19</p> <p>9 4 SUPPLEMENTAL DECLARATION OF ROXANE ROMANS IN SUPPORT OF DEFENDANTS' JOINT MOTION TO COMPEL ARBITRATION 20</p> <p>10 5 FELIX VALDEZ' MEMBERSHIP APPLICATION 23</p> <p>11 6 IZAAR VALDEZ' DISTRIBUTOR APPLICATION 24</p> <p>12 7 PATRICIA RODGER'S DISTRIBUTOR APPLICATION 25</p> <p>13 8 JENNIFER LOKEN'S DISTRIBUTOR APPLICATION 26</p> <p>14 9 IZAAR VALDEZ' DISTRIBUTOR APPLICATION 27</p> <p>15 10 CODY PYLE'S DISTRIBUTOR APPLICATION 27</p> <p>16 11 JENNIFER LAVIGNE'S DISTRIBUTOR APPLICATION 28</p> <p>17 12 2/13/14 HERBALIFE ANNOUNCEMENT 81</p> <p>18 13 SUMMARY OF UPDATES 83</p> <p>19 14 BOOK 4, WHICH INCLUDES THE RULES OF CONDUCT, SALES AND MARKETING PLAN, SAMPLE FORMS, ORDERING PROCEDURES, ENFORCEMENT PROCEDURES 99</p>

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<p style="text-align: right;">Page 5</p> <p>1 INDEX OF EXHIBITS</p> <p>2 EXHIBIT DESCRIPTION PAGE</p> <p>3 15 BOOK 4, VERSION 40, 105 REVISED DATE 09/13</p> <p>4 16 ONLINE ANNOUNCEMENT 110</p> <p>5 17 7/21/14 ANNOUNCEMENT 110</p> <p>6 18 BOOK 4, VERSION 31 116</p> <p>7 19 PRINTOUT OF MYHERBALIFE.COM HOME PAGE 123</p> <p>8 20 TERMS OF USE LOCATED IN 126 MYHERBALIFE.COM WEBSITE</p> <p>9 21 11/2016 VERSION 33, BOOK 4 139</p> <p>10</p> <p>11 (Original Exhibits 3 - 21 are attached</p> <p>12 hereto.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16 INSTRUCTED NOT TO ANSWER</p> <p>17 PAGE LINE</p> <p>18 61 10</p> <p>19 122 24</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 7</p> <p>1 MR. DROOKS: Up to you.</p> <p>2 MR. MARK: Okay.</p> <p>3 Q There is somebody transcribing everything</p> <p>4 that we say today. So I would ask that you please</p> <p>5 provide verbal responses. A shake of the head, a nod</p> <p>6 is not going to be recorded.</p> <p>7 A Yes.</p> <p>8 Q To the extent I ask a question that you</p> <p>9 don't understand, please ask me to rephrase it, and I</p> <p>10 will be happy to do that.</p> <p>11 A Thank you.</p> <p>12 Q If you answer a question, I am going to</p> <p>13 assume that you understand it; okay?</p> <p>14 A Okay.</p> <p>15 Q If at any point you want to take a break,</p> <p>16 feel free to ask and I will be happy to accommodate</p> <p>17 you.</p> <p>18 I would ask that if there is a question</p> <p>19 pending, you answer the question. Then you could take</p> <p>20 a break. Okay?</p> <p>21 A Thank you.</p> <p>22 Q Sure.</p> <p>23 What is your home address, please?</p> <p>24 A 4500 Via, V-I-A, Marina, No. 203, in</p> <p>25 Marina Del Rey, California 90292.</p>
<p style="text-align: right;">Page 6</p> <p>1 DEPOSITION OF ROXANE ROMANS</p> <p>2 JANUARY 24, 2018</p> <p>3</p> <p>4 ROXANE ROMANS,</p> <p>5 having been first duly sworn, testifies as follows:</p> <p>6</p> <p>7 EXAMINATION</p> <p>8 BY MR. MARK:</p> <p>9 Q Good afternoon, Ms. Romans.</p> <p>10 A Good afternoon.</p> <p>11 Q My name is Etan Mark. I represent the</p> <p>12 plaintiffs in this case. I am going to be asking you</p> <p>13 some questions today; okay?</p> <p>14 A Okay.</p> <p>15 Q Have you been deposed before?</p> <p>16 A Yes.</p> <p>17 Q Okay. How many times, approximately?</p> <p>18 A Three.</p> <p>19 Q When was the last time you were deposed?</p> <p>20 A To the best of my recollection, maybe about</p> <p>21 three, four years ago.</p> <p>22 Q Okay. Do you want me to run through the</p> <p>23 ground rules for today?</p> <p>24 MR. MARK: Mr. Drooks, you want me to run</p> <p>25 through the grounds rules?</p>	<p style="text-align: right;">Page 8</p> <p>1 Q And your work address?</p> <p>2 A My work address -- sorry, I don't recall.</p> <p>3 We moved recently.</p> <p>4 Q Okay.</p> <p>5 A Our building, it is in Torrance.</p> <p>6 Q It's in Torrance?</p> <p>7 A Yes, on 190th.</p> <p>8 Q Do you work in the same building as</p> <p>9 Ms. Ramirez?</p> <p>10 A Yes -- no. Sorry, no.</p> <p>11 Q No.</p> <p>12 Okay. Are you under any medication that</p> <p>13 would impact your ability to testify truthfully or</p> <p>14 completely today?</p> <p>15 A No.</p> <p>16 Q What did you do to prepare for today's</p> <p>17 deposition?</p> <p>18 And I don't want to hear about any</p> <p>19 conversations you have had with your attorneys, other</p> <p>20 than that.</p> <p>21 A Reviewed my declarations.</p> <p>22 Q Okay. Did you review the exhibits that were</p> <p>23 attached to the declaration, as well?</p> <p>24 A Yes.</p> <p>25 Q What is your title at Herbalife?</p>

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<p style="text-align: right;">Page 9</p> <p>1 A The senior director of Member Policy 2 Administration. 3 Q And that's for which company? 4 A Herbalife International of America, Inc. 5 Q What are your responsibilities as a senior 6 director of Member Policy Administration? 7 A My current responsibilities are developing 8 strategies that relate to our member policies and 9 member materials and departmental operations. 10 Q Did you say departmental -- 11 A Operations. 12 Q -- operations? 13 So what does that mean, developing strategy 14 relating to member policies and member materials? 15 What -- on a day-to-day basis, what does 16 that mean? 17 A So, basically, coming up with ideas on how 18 to improve either our materials that include 19 distributor policies or the policies themselves or the 20 way we do the work in our department. 21 Q And what is your department? 22 A Member Policy Administration. 23 Q How many employees are in that department? 24 A It's a worldwide department, but in the 25 U.S., we have seven employees, including myself.</p>	<p style="text-align: right;">Page 11</p> <p>1 Q When you said "the rule book," is that the 2 same as the Rules of Conduct? 3 A Yes. 4 Q And the "member application," is that the 5 same thing as the Application for International 6 Distributorship? 7 A Correct. 8 Q If I use those phrases interchangeably 9 today, you understand what I mean? 10 A Yes. 11 Q I might say, "rule book." I say might say, 12 "Rules of Conduct." I mean the same thing when I -- 13 A Yes. 14 Q Okay. I will try to use your vernacular, 15 though. 16 Are you responsible for updating these 17 documents? 18 A Yes. 19 Q And what is the process, usually, for 20 updating these documents? 21 A My department becomes aware that there is a 22 need to either update a current rule or add an 23 additional rule, and we facilitate that happening. 24 Q How does your department become aware of the 25 need to update the rules?</p>
<p style="text-align: right;">Page 10</p> <p>1 Q Are you the head of the department in the 2 U.S.? 3 A Yes. 4 Q Who do you report to? 5 A Pamela Jones Harbor. 6 Q Harbor? 7 A H-A-R-B-O-R. 8 Q And what is her title? 9 A She is the senior vice president, legal 10 officer of privacy and worldwide compliance. 11 Q Are you an attorney? 12 A No. 13 Q Do you hold any graduate degrees? 14 A No. 15 Q Are you generally familiar with the member 16 policies and member materials? 17 A Yes. 18 Q Okay. And what falls into that description, 19 member policies and member materials? What documents 20 are we talking about? 21 A So numerous documents: Our rule book, our 22 member application and other agreements and materials 23 that we post online, advisories. 24 Q Post online on myherbalife.com? 25 A Correct.</p>	<p style="text-align: right;">Page 12</p> <p>1 A Generally, from our other business partners 2 within the company. 3 Q "Other business partners," meaning other 4 employees of Herbalife or -- 5 A Yes, perhaps, from the legal department or 6 other departments within Herbalife. 7 Q Okay. Okay. How many times has Herbalife 8 amended the member application? 9 A Numerous times. 10 Q Well, are you aware of what version of the 11 member application is currently in effect? 12 A To the best of my recollection, it is 13 Version 48. 14 Q And does that mean Herbalife's amended it 48 15 times? 16 MR. DROOKS: Um-hmm. 17 BY MR. MARK: 18 Q You can answer. 19 A No. 20 Q So -- so just -- I did not mention this in 21 the ground rules. I apologize. There is going to be 22 sometimes where your counsel is going to be objecting 23 to my questions because they are, for whatever reason, 24 not good questions. 25 Unless he instructs you not to answer, I</p>

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<p style="text-align: right;">Page 13</p> <p>1 would ask that you answer the question. Okay?</p> <p>2 A Okay.</p> <p>3 Q So -- so you said that, no, Version 48 does</p> <p>4 not mean that it was amended 48 times.</p> <p>5 Can you explain that?</p> <p>6 A Sure.</p> <p>7 The -- the versioning of our materials</p> <p>8 occurs between the printer and our Creative Services</p> <p>9 Department. So there are times where maybe they have</p> <p>10 skipped a numbering versioning. Sometimes that</p> <p>11 happens to a line -- our Spanish version of an</p> <p>12 application and our English version of an application</p> <p>13 or sometimes -- I don't know exactly the reason; but</p> <p>14 something happens between the printing company and our</p> <p>15 Creative Services Department.</p> <p>16 So just because it is Version 48, doesn't</p> <p>17 necessarily reflect that it has been changed 48 times.</p> <p>18 Q Okay.</p> <p>19 A I wouldn't know without studying how many</p> <p>20 times.</p> <p>21 Q And the same thing, same question for the</p> <p>22 Rules of Conduct, do you know what version,</p> <p>23 approximately, you were on on the Rules of Conduct?</p> <p>24 A Today, I believe it is Version 34D.</p> <p>25 Q Okay. Do you know how many times the Rules</p>	<p style="text-align: right;">Page 15</p> <p>1 Q And Rules of Conduct, you don't know how</p> <p>2 many times that has been amended?</p> <p>3 A No.</p> <p>4 Q Do you know approximately how many times it</p> <p>5 has been amended?</p> <p>6 A No.</p> <p>7 Q There is varying terminology that I have</p> <p>8 seen in the Rules of Conduct and the application,</p> <p>9 distributor, member and customer?</p> <p>10 A Yes.</p> <p>11 Q Do you know what each of those terms means</p> <p>12 in the context of those documents?</p> <p>13 A Yes.</p> <p>14 Q Can you tell me?</p> <p>15 A Sure.</p> <p>16 So our distributor relates to an individual</p> <p>17 who entered into an application in order to do the</p> <p>18 business, which means purchase the products either for</p> <p>19 their personal use or for resale, and to recruit</p> <p>20 others to do the same.</p> <p>21 Q Okay.</p> <p>22 A A member is an individual who entered into a</p> <p>23 contract simply to obtain a discount on our products</p> <p>24 for personal use. They do not do the business.</p> <p>25 Q Okay.</p>
<p style="text-align: right;">Page 14</p> <p>1 of Conduct have been amended?</p> <p>2 A No. Numerous times.</p> <p>3 Q More than 30?</p> <p>4 A I wouldn't know without studying that.</p> <p>5 Q So -- so -- well, let's take a step back.</p> <p>6 We are currently on Version 48 of the</p> <p>7 application; right?</p> <p>8 A Yes.</p> <p>9 Q Are we on Version 48 of the Spanish</p> <p>10 application, as well?</p> <p>11 A They should align. I believe that they do</p> <p>12 at this time.</p> <p>13 Q Okay. And Version 34D of the Rules of</p> <p>14 Conduct, is it also up to Version 34D of the Spanish</p> <p>15 versions of the Rules of Conduct?</p> <p>16 A I believe so at this time.</p> <p>17 Q And are those rules identical, say, for the</p> <p>18 language? In other words, the translation?</p> <p>19 A Yes.</p> <p>20 Q So you don't know how many times the</p> <p>21 application has been amended?</p> <p>22 A Correct.</p> <p>23 Q Do you know approximately how many times it</p> <p>24 has been amended?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 16</p> <p>1 A And a customer relates to an individual that</p> <p>2 is purchasing a product from a distributor.</p> <p>3 Q Okay. And that's currently the way those</p> <p>4 words are used; right?</p> <p>5 A Correct.</p> <p>6 Q Is that a fairly recent change?</p> <p>7 MR. DROOKS: Lacks foundation.</p> <p>8 BY MR. MARK:</p> <p>9 Q Do you know? In other words --</p> <p>10 MR. DROOKS: It still lacks foundation.</p> <p>11 BY MR. MARK:</p> <p>12 Q Okay. You can answer.</p> <p>13 A Can I ask you to rephrase the question?</p> <p>14 Q Sure. Yeah, that's fine.</p> <p>15 This difference between distributor and</p> <p>16 member that you just outlined, has it always been that</p> <p>17 way at Herbalife?</p> <p>18 A Yes.</p> <p>19 Q Did it used to mean the same thing,</p> <p>20 distributor/member?</p> <p>21 A No, it has never meant the same thing.</p> <p>22 Q Okay.</p> <p>23 A But it wasn't -- it wasn't defined that way</p> <p>24 in our materials.</p> <p>25 Q It used to be defined a different way in</p>

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<p style="text-align: right;">Page 17</p> <p>1 your materials?</p> <p>2 A We used to simply use the term</p> <p>3 "distributor."</p> <p>4 Q I see. So the term "member" is a new term</p> <p>5 for Herbalife?</p> <p>6 A Yes.</p> <p>7 Q Okay. And distributor, what a distributor</p> <p>8 means in the old way that Herbalife used it?</p> <p>9 A Distributor was a person that entered into</p> <p>10 an agreement --</p> <p>11 Q Regardless of --</p> <p>12 A -- with Herbalife.</p> <p>13 Q Regardless of whether the product was solely</p> <p>14 for personal consumption or to pursue a business</p> <p>15 opportunity?</p> <p>16 A Correct.</p> <p>17 Q And at a certain point, there was a decision</p> <p>18 to create these two different categories?</p> <p>19 A Correct.</p> <p>20 Q Do you know when that was done?</p> <p>21 A To the best of my recollection, it was in</p> <p>22 2013 or '14.</p> <p>23 Q Okay. So not all -- not all members are</p> <p>24 distributors today?</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 19</p> <p>1 A Not the Rules of Conduct, no.</p> <p>2 MR. MARK: Okay. I am going to hand you a</p> <p>3 document that we will mark as Exhibit 3.</p> <p>4 (Exhibit 3 marked.)</p> <p>5 THE WITNESS: Can I grab my glasses?</p> <p>6 MR. MARK: Of course.</p> <p>7 Q Okay. Have you seen this document before?</p> <p>8 A Yes, I have.</p> <p>9 Q Can you identify it for me, please?</p> <p>10 A This is my declaration.</p> <p>11 Q You signed it?</p> <p>12 A Yes, I did.</p> <p>13 Q And you agree with the statements contained</p> <p>14 therein?</p> <p>15 A Yes, I do.</p> <p>16 Q You didn't write this declaration; did you?</p> <p>17 A No, I didn't.</p> <p>18 Q Did you make any changes to the declaration</p> <p>19 once you received it?</p> <p>20 A Yes, I did.</p> <p>21 Q What were the changes that you made?</p> <p>22 A I don't specifically recall what the changes</p> <p>23 were, but if there was anything that I verified</p> <p>24 that -- if there was a discrepancy, then I made that</p> <p>25 change.</p>
<p style="text-align: right;">Page 18</p> <p>1 Q But all distributors are members?</p> <p>2 A All distributors are members -- can you say</p> <p>3 that again?</p> <p>4 Q Sure.</p> <p>5 Distributors can both pursue the business</p> <p>6 opportunity and also purchase the product for personal</p> <p>7 consumption; right?</p> <p>8 A Correct.</p> <p>9 Q It can be both?</p> <p>10 Whereas members only are obtaining it to --</p> <p>11 are only purchasing the product to obtain the discount</p> <p>12 for personal consumption?</p> <p>13 A Correct.</p> <p>14 Q Okay. And what is the approximate split</p> <p>15 today of Herbalife distributors versus members?</p> <p>16 A I am not aware of that figure.</p> <p>17 Q Are there more distributors or more members?</p> <p>18 A I would be speculating. I don't know.</p> <p>19 Q Okay. I don't want you to speculate.</p> <p>20 The Rules of Conduct, do those apply to both</p> <p>21 distributors and members?</p> <p>22 A The Rules of Conduct apply to distributors.</p> <p>23 Members don't do the business.</p> <p>24 Q So the Rules of Conduct do not apply to</p> <p>25 members?</p>	<p style="text-align: right;">Page 20</p> <p>1 Q Okay. Now, there came a certain point in</p> <p>2 which you signed a supplemental declaration; correct?</p> <p>3 A Yes.</p> <p>4 Q Okay. And why did you do that?</p> <p>5 A I believe it was for clarification purposes</p> <p>6 about the printing of one of our rule books.</p> <p>7 MR. MARK: I will hand you a document that</p> <p>8 we will mark as Exhibit 4.</p> <p>9 THE WITNESS: Thank you.</p> <p>10 BY MR. MARK:</p> <p>11 Q Can you identify that document for me,</p> <p>12 please?</p> <p>13 (Exhibit 4 marked.)</p> <p>14 THE WITNESS: Yes, this is the supplemental</p> <p>15 declaration that I signed.</p> <p>16 BY MR. MARK:</p> <p>17 Q So the reason you signed the supplemental</p> <p>18 declaration is because the wrong version of the rules</p> <p>19 was attached to the first declaration with respect to</p> <p>20 Exhibit C?</p> <p>21 A I believe that was the case.</p> <p>22 Q Okay. But other than that, everything in</p> <p>23 your first declaration marked as Exhibit 3 is correct?</p> <p>24 A Yes, correct.</p> <p>25 Q These applications or distributor agreements</p>

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<p style="text-align: right;">Page 21</p> <p>1 that we are talking about, how are those maintained by</p> <p>2 Herbalife?</p> <p>3 A Those are maintained online.</p> <p>4 Q Are there hard copies kept of any of the</p> <p>5 distributor applications?</p> <p>6 A I believe with regard to paper applications,</p> <p>7 there are paper records, and to the best of my</p> <p>8 knowledge, the online applications are maintained, you</p> <p>9 know, online.</p> <p>10 Q Is there a system at Herbalife that</p> <p>11 maintains those applications?</p> <p>12 A Yes.</p> <p>13 Q What is it called?</p> <p>14 A I -- I can't respond to that because</p> <p>15 technology may have advanced since -- since I knew</p> <p>16 what we used to use.</p> <p>17 Q Well, I am asking today.</p> <p>18 A I wouldn't know the name of the system</p> <p>19 today.</p> <p>20 Q So do you know today how online applications</p> <p>21 are maintained at Herbalife?</p> <p>22 A They are maintained online.</p> <p>23 Q But you don't know how -- you don't know how</p> <p>24 they get there or who is responsible for maintaining</p> <p>25 them?</p>	<p style="text-align: right;">Page 23</p> <p>1 (Exhibit 5 marked.)</p> <p>2 BY MR. MARK:</p> <p>3 Q Have you seen this document before?</p> <p>4 A Yes, I have.</p> <p>5 Q Okay. So this document has been marked as</p> <p>6 Exhibit 5. Can you identify, please, what that</p> <p>7 document is?</p> <p>8 A Yes, this is a membership application for</p> <p>9 Felix Valdez.</p> <p>10 Q What is the date of that application?</p> <p>11 A The date the member signed the application?</p> <p>12 Q Yes.</p> <p>13 A Is June 14th of 2008.</p> <p>14 MR. MARK: Hand you a document that we will</p> <p>15 mark as Exhibit 6 -- well, before I move on to that,</p> <p>16 I'm sorry.</p> <p>17 Q Exhibit 5, you will agree with me, that is</p> <p>18 the same document that was attached as Exhibit M to</p> <p>19 your declaration?</p> <p>20 A Exhibit M being the English translation</p> <p>21 of --</p> <p>22 Q So look at your declaration, which is --</p> <p>23 A Oh, I see it. It is here, sorry.</p> <p>24 MR. DROOKS: You don't have the exhibits</p> <p>25 attached to the declaration; do you?</p>
<p style="text-align: right;">Page 22</p> <p>1 A I know that the records department scans</p> <p>2 paper applications and uploads them into a system, an</p> <p>3 online system. I don't know the name of that system.</p> <p>4 Q And what about the -- what about the</p> <p>5 applications that are completed online, how are those</p> <p>6 maintained at Herbalife?</p> <p>7 A Those are, to my knowledge, maintained</p> <p>8 online.</p> <p>9 Q How do you know that?</p> <p>10 A Because we have access to those applications</p> <p>11 online.</p> <p>12 Q But you don't know the name of the system</p> <p>13 you have to access to get the applications?</p> <p>14 A Correct.</p> <p>15 Q Do you, in the regular course of your</p> <p>16 business, access the applications online?</p> <p>17 A No.</p> <p>18 Q When was the last time you went online to</p> <p>19 access an application?</p> <p>20 A Years.</p> <p>21 MR. MARK: Okay. Well, I am going to hand</p> <p>22 you a series of documents that we will mark as</p> <p>23 Exhibits, I guess, 5 through 11, maybe.</p> <p>24 So the first one I am going to hand you is</p> <p>25 attached as Exhibit M to your declaration.</p>	<p style="text-align: right;">Page 24</p> <p>1 MR. MARK: Well, I want her to confirm that</p> <p>2 that is the document.</p> <p>3 MR. DROOKS: Well, then you need to give her</p> <p>4 the declaration with the exhibits, so she could match</p> <p>5 them up to make sure that they have not been changed.</p> <p>6 MR. MARK: Okay.</p> <p>7 MR. DROOKS: If you are representing that</p> <p>8 you --</p> <p>9 MR. MARK: I am.</p> <p>10 MR. DROOKS: -- are offering it to her, I</p> <p>11 have no reason to dispute it.</p> <p>12 MR. MARK: That's fine.</p> <p>13 Q So look at not the supplemental declaration,</p> <p>14 the original, the other declaration, okay, and if you</p> <p>15 look at paragraph 16.</p> <p>16 So I am representing to you that Exhibit 5</p> <p>17 is Exhibit M to your declaration.</p> <p>18 A That's correct.</p> <p>19 Q Okay.</p> <p>20 MR. MARK: I am going to hand you Exhibit 6.</p> <p>21 THE WITNESS: Thank you.</p> <p>22 (Exhibit 6 marked.)</p> <p>23 BY MR. MARK:</p> <p>24 Q Can you identify, please, what Exhibit 6 is?</p> <p>25 A This is a distributor application from Izaar</p>

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<p style="text-align: right;">Page 25</p> <p>1 Valdez.</p> <p>2 Q What is the date of that, please?</p> <p>3 A The date signed was June 14th, 2008.</p> <p>4 Q Okay. And if you look at paragraph 17 of</p> <p>5 your declaration, and I am going to represent to you</p> <p>6 that the document marked as Exhibit 6 was Exhibit N to</p> <p>7 your declaration. Okay?</p> <p>8 A Yes, that's correct.</p> <p>9 MR. MARK: Hand you a document that we will</p> <p>10 mark --</p> <p>11 MR. DROOKS: If you represent to us that you</p> <p>12 have taken an exhibit with a letter on it from</p> <p>13 Ms. Romans' declaration and you're now marking it with</p> <p>14 a number, we are not going to dispute that.</p> <p>15 MR. MARK: Okay.</p> <p>16 MR. DROOKS: You don't need to have her</p> <p>17 physically compare them.</p> <p>18 MR. MARK: Okay. But I am going to be</p> <p>19 marking each of the applications, so --</p> <p>20 MR. DROOKS: That's fine.</p> <p>21 MR. MARK: -- as separate exhibits.</p> <p>22 THE REPORTER: That's 7.</p> <p>23 (Exhibit 7 marked.)</p> <p>24 BY MR. MARK:</p> <p>25 Q Okay. Have you seen that document before?</p>	<p style="text-align: right;">Page 27</p> <p>1 THE REPORTER: That is 9.</p> <p>2 MR. MARK: Exhibit 9. Handing you what has</p> <p>3 been marked as Exhibit 9.</p> <p>4 Q Can you identify that for me, please?</p> <p>5 (Exhibit 9 marked.)</p> <p>6 THE WITNESS: A distributor application</p> <p>7 submitted by Izaar Valdez.</p> <p>8 BY MR. MARK:</p> <p>9 Q What is the date of that, please?</p> <p>10 A March 22nd, 2013.</p> <p>11 Q Do you recognize that document?</p> <p>12 A Yes.</p> <p>13 Q And I will represent to you that was</p> <p>14 attached as Exhibit O to your declaration. Okay?</p> <p>15 A Thank you.</p> <p>16 MR. MARK: Handing you what we will mark as</p> <p>17 Exhibit 10.</p> <p>18 (Exhibit 10 marked.)</p> <p>19 BY MR. MARK:</p> <p>20 Q Can you identify that document, please?</p> <p>21 A A distributorship application submitted by</p> <p>22 Cody Pyle.</p> <p>23 Q What is the date of that, please?</p> <p>24 A 7/7/2014.</p> <p>25 Q And have you seen that document before?</p>
<p style="text-align: right;">Page 26</p> <p>1 A Yes.</p> <p>2 Q What is it?</p> <p>3 A It's a distributor application submitted by</p> <p>4 Patricia Rodgers.</p> <p>5 Q What is the date of that application,</p> <p>6 please?</p> <p>7 A June 23rd, 2010.</p> <p>8 Q I am going to represent to you that that is</p> <p>9 attached as Exhibit I to your declaration. Okay?</p> <p>10 A Okay.</p> <p>11 MR. MARK: Handing you what has been marked</p> <p>12 as Exhibit 8.</p> <p>13 (Exhibit 8 marked.)</p> <p>14 THE WITNESS: Thank you.</p> <p>15 BY MR. MARK:</p> <p>16 Q Have you seen that document before?</p> <p>17 A Yes, I have.</p> <p>18 Q Can you identify it, please?</p> <p>19 A A distributor application submitted by</p> <p>20 Jennifer Loken.</p> <p>21 Q And what is the date of that document?</p> <p>22 A February 14th, 2011.</p> <p>23 Q I am going to represent to you that that was</p> <p>24 attached as Exhibit K to your declaration. Okay?</p> <p>25 A Okay.</p>	<p style="text-align: right;">Page 28</p> <p>1 A Yes, I have.</p> <p>2 Q And I will represent to you that was</p> <p>3 attached as Exhibit L to your declaration.</p> <p>4 A Thank you.</p> <p>5 MR. MARK: Last, but not least, Exhibit 11.</p> <p>6 (Exhibit 11 marked.)</p> <p>7 BY MR. MARK:</p> <p>8 Q Have you seen that document before?</p> <p>9 A Yes, I have.</p> <p>10 Q What is it?</p> <p>11 A A distributorship application submitted by</p> <p>12 Jennifer Lavigne.</p> <p>13 Q Have you seen that document before?</p> <p>14 A Yes, I have.</p> <p>15 Q What is the date of it, please?</p> <p>16 A December 2nd, 2014.</p> <p>17 Q Okay. I will represent to you that was</p> <p>18 attached as Exhibit J to your declaration. Okay?</p> <p>19 A Thank you.</p> <p>20 Q So when we were talking about how were these</p> <p>21 documents maintained by Herbalife, you stated that</p> <p>22 some are maintained in hard copy and some are</p> <p>23 maintained electronically; is that correct?</p> <p>24 MR. DROOKS: Mischaracterizes the testimony.</p> <p>25</p>

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<p style="text-align: right;">Page 29</p> <p>1 BY MR. MARK:</p> <p>2 Q You can answer.</p> <p>3 A I think what I stated was paper applications</p> <p>4 are scanned into our online system, and online</p> <p>5 applications are, obviously, directly input into the</p> <p>6 system.</p> <p>7 Q Are original paper applications maintained</p> <p>8 at Herbalife, as well?</p> <p>9 A Yes.</p> <p>10 Q Okay. So the paper applications are</p> <p>11 maintained in both the hard copy form and electronic</p> <p>12 form?</p> <p>13 A Yes.</p> <p>14 Q And then the online applications are only</p> <p>15 maintained in their electronic form?</p> <p>16 A To my knowledge.</p> <p>17 Q Okay. So let's start by looking at the</p> <p>18 declarations of -- I'm sorry, the application of Izaar</p> <p>19 Valdez.</p> <p>20 MR. DROOKS: Which one?</p> <p>21 MR. MARK: Exhibit 6.</p> <p>22 Q This is not an electronic application;</p> <p>23 correct?</p> <p>24 A Correct.</p> <p>25 Q Is this a -- this is a one-page,</p>	<p style="text-align: right;">Page 31</p> <p>1 MR. DROOKS: "This document" being</p> <p>2 Exhibit 6?</p> <p>3 MR. MARK: Yes. I am talking about</p> <p>4 Exhibit 6 right now.</p> <p>5 THE WITNESS: The version date on this</p> <p>6 document is No. 31.</p> <p>7 BY MR. MARK:</p> <p>8 Q So this is Version 31?</p> <p>9 A Spanish.</p> <p>10 Q In Spanish.</p> <p>11 And what is the -- and if you turn two</p> <p>12 pages, you will see that there is the English version</p> <p>13 of this document; is that right?</p> <p>14 A Yes, that's correct.</p> <p>15 Q And this is the Version 29 of the English</p> <p>16 version; is that right?</p> <p>17 A Yes, that's correct.</p> <p>18 Q And the Spanish version, the revision says</p> <p>19 it is effective January, 2008; is that correct?</p> <p>20 A Can you repeat the question?</p> <p>21 Q Sure.</p> <p>22 The revision date is January, 2008; is that</p> <p>23 correct?</p> <p>24 A Are you asking about the -- which document</p> <p>25 are you asking?</p>
<p style="text-align: right;">Page 30</p> <p>1 double-sided form as maintain -- the original form, is</p> <p>2 it a one-page double-sided piece of paper?</p> <p>3 A I believe it was.</p> <p>4 Q Okay. And the only place for signature on</p> <p>5 this document that has been marked as Exhibit 6 is on</p> <p>6 the first page; right?</p> <p>7 A That's correct.</p> <p>8 Q And this document, if you look at</p> <p>9 paragraph 4 -- do you speak Spanish?</p> <p>10 A A little bit.</p> <p>11 Q Okay. Me, too, just a little, though.</p> <p>12 If you look at paragraph 4 of this document</p> <p>13 marked as Exhibit 6, there is a provision requiring</p> <p>14 the parties to mediate if there is any dispute and</p> <p>15 then arbitrate.</p> <p>16 Do you see that?</p> <p>17 A Yes, I do.</p> <p>18 Q Okay. Now, at a certain point in time,</p> <p>19 Herbalife removed the arbitration provision; is that</p> <p>20 correct?</p> <p>21 A Yes, that's correct.</p> <p>22 Q Do you know when that occurred?</p> <p>23 A No, I don't recall.</p> <p>24 Q All right. And what version is this</p> <p>25 document?</p>	<p style="text-align: right;">Page 32</p> <p>1 Q So I am looking in Exhibit 6.</p> <p>2 A Uh-huh.</p> <p>3 Q And you will see there is a footer on</p> <p>4 Exhibit 6 that says, "Form 4011-USSP-31 Rev 01/08."</p> <p>5 Did I read that correctly? It's small.</p> <p>6 A Yeah, it is small.</p> <p>7 MR. DROOKS: I see the witness is having</p> <p>8 trouble reading it.</p> <p>9 Do you mind if she hands it to me and I will</p> <p>10 read it and stipulate if you have read it accurately?</p> <p>11 MR. MARK: That's fine.</p> <p>12 MR. DROOKS: I am reading it and we will</p> <p>13 stipulate that the first page of Exhibit 6 reads,</p> <p>14 Form 4011-USSP-31, space, Rev, space, 01/0 -- and I</p> <p>15 believe that is an 8. It could be a 6, but I think it</p> <p>16 is an 8.</p> <p>17 MR. MARK: Okay. So we are saying the same</p> <p>18 thing, then. Okay?</p> <p>19 MR. DROOKS: Yeah. And looking, by the way,</p> <p>20 at Exhibit N to the witness' declaration, which is a</p> <p>21 clearer copy, it is clearly an 8.</p> <p>22 MR. MARK: Well, you are looking at the</p> <p>23 English version. That is why.</p> <p>24 MR. DROOKS: That's true.</p> <p>25</p>

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<p style="text-align: right;">Page 33</p> <p>1 BY MR. MARK:</p> <p>2 Q Okay. So does this mean that the last</p> <p>3 revision -- that this document was revised in January</p> <p>4 of 2008; is that what that footer means?</p> <p>5 A Correct.</p> <p>6 Q Okay. So at a certain point after January,</p> <p>7 2008, Herbalife removed this arbitration provision;</p> <p>8 correct?</p> <p>9 A I don't recall when it was removed.</p> <p>10 Q Well, it was certainly after January, 2008,</p> <p>11 though; right? Because this document was signed in</p> <p>12 June of 2008, and it was last revised in January of</p> <p>13 2008.</p> <p>14 A Yes, correct.</p> <p>15 Q Okay.</p> <p>16 A Um-hmm.</p> <p>17 Q Do you know why Herbalife removed the</p> <p>18 arbitration provision in this document?</p> <p>19 A No.</p> <p>20 Q But you would agree with me that there was a</p> <p>21 certain point in time -- and we will look at those</p> <p>22 applications soon -- in which Herbalife removed the</p> <p>23 arbitration provision; correct?</p> <p>24 A Yes.</p> <p>25 Q Do you see there is a stamp on this page?</p>	<p style="text-align: right;">Page 35</p> <p>1 process in 2008, as well?</p> <p>2 A Yes.</p> <p>3 Q Now, if you look at Exhibit 5, which is</p> <p>4 Felix Valdez's application.</p> <p>5 A Yes.</p> <p>6 Q The form is identical; correct?</p> <p>7 Actually, it's not. This is a different</p> <p>8 application; correct?</p> <p>9 A Yes, correct. It is a different version of</p> <p>10 the application.</p> <p>11 Q And what version is this?</p> <p>12 A This one is the Spanish version with the</p> <p>13 number 28, revision date March of '06.</p> <p>14 Q Okay. Now, are you aware of what the</p> <p>15 difference is between these two versions?</p> <p>16 A No, I am not.</p> <p>17 Q Okay. And which application is</p> <p>18 Mr. Valdez -- Felix Valdez, Exhibit 5, which</p> <p>19 application is Mr. Valdez bound to?</p> <p>20 MR. DROOKS: Calls for a legal conclusion.</p> <p>21 BY MR. MARK:</p> <p>22 Q You can answer.</p> <p>23 MR. DROOKS: And by "which," do you mean</p> <p>24 Exhibit M or N?</p> <p>25 MR. MARK: Yeah.</p>
<p style="text-align: right;">Page 34</p> <p>1 It is hard to see, but it is across -- it is</p> <p>2 sort of a vertical line under where it says, Acuerdo</p> <p>3 de distribucion.</p> <p>4 Do you see that?</p> <p>5 A Yes.</p> <p>6 Q What is that?</p> <p>7 MR. CATLETT: Foundation.</p> <p>8 BY MR. MARK:</p> <p>9 Q You can answer.</p> <p>10 A To the best of my knowledge, it would be the</p> <p>11 stamp imposed by the records department when they</p> <p>12 physically received this application.</p> <p>13 Q Okay. So -- and that is why I am interested</p> <p>14 in the process a little bit.</p> <p>15 So this hard copy is filled out by</p> <p>16 Ms. Valdez and it is sent into Herbalife. Herbalife</p> <p>17 receives it, stamps it, and puts it in a hard file; is</p> <p>18 that right?</p> <p>19 A I am not an expert in that area.</p> <p>20 Q Do you know how that is done or no?</p> <p>21 A To the best of my knowledge, it is as you</p> <p>22 described. The application is submitted and stamped</p> <p>23 by the records department and scanned into the online</p> <p>24 system; and the paper copy is filed.</p> <p>25 Q And it is your understanding that was the</p>	<p style="text-align: right;">Page 36</p> <p>1 Q I am asking, in other words, he signed this</p> <p>2 in June of -- the same day as Izaar Valdez; right?</p> <p>3 They appear to be signed the same day;</p> <p>4 correct?</p> <p>5 A Correct.</p> <p>6 Q Okay. And there are two different versions</p> <p>7 of the application; correct?</p> <p>8 A Correct.</p> <p>9 Q And Version 31 was in place after</p> <p>10 Version 28; correct?</p> <p>11 A Correct.</p> <p>12 Q Do you know which version of the</p> <p>13 application, Exhibit 5 or Exhibit 6, Mr. Valdez is</p> <p>14 bound to?</p> <p>15 MR. DROOKS: Calls for a legal conclusion.</p> <p>16 BY MR. MARK:</p> <p>17 Q You can answer.</p> <p>18 MR. CATLETT: Join.</p> <p>19 THE WITNESS: Both Mr. Valdezs are --</p> <p>20 BY MR. MARK:</p> <p>21 Q Okay. Well, Izaar is a female, but --</p> <p>22 A Oh, I didn't know.</p> <p>23 Q That's okay. Yeah.</p> <p>24 A By virtue of signing these applications,</p> <p>25 they are bound by all of our rules. There is a clause</p>

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<p style="text-align: right;">Page 37</p> <p>1 in the application --</p> <p>2 Q Um-hmm.</p> <p>3 A -- that dictates that.</p> <p>4 Q Okay. So does that mean that they are</p> <p>5 always bound by the latest version of the application?</p> <p>6 A They are bound by the most current version</p> <p>7 of our rules.</p> <p>8 Q And what about the application, are they</p> <p>9 bound by the most current version of the application,</p> <p>10 as well?</p> <p>11 MR. DROOKS: Calls for a legal conclusion.</p> <p>12 THE WITNESS: I think I would have to be a</p> <p>13 lawyer to answer that.</p> <p>14 BY MR. MARK:</p> <p>15 Q Well, you have testified that they are bound</p> <p>16 by the most current version of the rules; correct?</p> <p>17 A Because we have a clause in the application</p> <p>18 that states that.</p> <p>19 Q Where does it say that?</p> <p>20 A So clause No. 1:</p> <p>21 "I apply to become an independent</p> <p>22 distributor of Herbalife products</p> <p>23 on the terms and conditions set</p> <p>24 forth below and on the back of this</p> <p>25 form, as well as the documents</p>	<p style="text-align: right;">Page 39</p> <p>1 with such modifications and</p> <p>2 amendments as Herbalife shall make</p> <p>3 from time to time in its sole and</p> <p>4 absolute discretion collectively</p> <p>5 the rules are each hereby</p> <p>6 incorporated into this agreement of</p> <p>7 distributorship, each in its then</p> <p>8 most recently published form."</p> <p>9 Q Okay. So that's the basis for your</p> <p>10 testimony that the individuals who -- that sign these</p> <p>11 applications are subject to the Rules of Conduct that</p> <p>12 are in effect at the time?</p> <p>13 MR. DROOKS: Lacks foundation. Calls for a</p> <p>14 legal conclusion.</p> <p>15 MR. CATLETT: Object to the form.</p> <p>16 THE WITNESS: That's correct.</p> <p>17 BY MR. MARK:</p> <p>18 Q And if you see here, look at -- looking at</p> <p>19 Exhibit 6, it refers to an Herbalife International</p> <p>20 business pack, IBP or mini IBP.</p> <p>21 Do you see that?</p> <p>22 MR. DROOKS: Are you talking about the</p> <p>23 English translation, paragraph 5?</p> <p>24 MR. MARK: No, I am talking about</p> <p>25 paragraph 3(a).</p>
<p style="text-align: right;">Page 38</p> <p>1 which are expressly incorporated</p> <p>2 into this agreement of</p> <p>3 distributorship."</p> <p>4 Q Okay. And which documents are "expressly</p> <p>5 incorporated into this agreement of distributorship"?</p> <p>6 MR. DROOKS: Calls for a legal conclusion.</p> <p>7 BY MR. MARK:</p> <p>8 Q You can answer.</p> <p>9 A Can you -- can you repeat the question?</p> <p>10 Q Sure.</p> <p>11 Which documents are "expressly incorporated</p> <p>12 into this agreement of distributorship"?</p> <p>13 A So those documents are identified in clause</p> <p>14 No. 5.</p> <p>15 Q Okay.</p> <p>16 A Which explicitly states:</p> <p>17 "The Herbalife International</p> <p>18 business pack contains, among other</p> <p>19 things, the Rules of Conduct and</p> <p>20 distributor policies, the sales and</p> <p>21 marketing plan, ordering procedures</p> <p>22 and sample forms. Those documents</p> <p>23 and such other rules and policies</p> <p>24 as Herbalife has published or in</p> <p>25 the future may publish, together</p>	<p style="text-align: right;">Page 40</p> <p>1 MR. DROOKS: In the English version?</p> <p>2 MR. MARK: Yes. It is in both versions. I</p> <p>3 am just using English.</p> <p>4 MR. DROOKS: Okay.</p> <p>5 THE WITNESS: Yes, I see that.</p> <p>6 BY MR. MARK:</p> <p>7 Q Okay. What is the Herbalife International</p> <p>8 business pack?</p> <p>9 A The Herbalife International business pack is</p> <p>10 what an individual purchases when they want to become</p> <p>11 a distributor.</p> <p>12 Q Okay. And what is in an International</p> <p>13 business pack?</p> <p>14 MR. DROOKS: Vague as to time.</p> <p>15 BY MR. MARK:</p> <p>16 Q At the time that this document was signed in</p> <p>17 June of 2008, what was in the International business</p> <p>18 pack?</p> <p>19 A I am not an expert, but I can tell you, to</p> <p>20 the best of my knowledge, what was included in the</p> <p>21 pack.</p> <p>22 Q Um-hmm.</p> <p>23 A Distributorship application, a button, some</p> <p>24 product, and some marketing literature, as well as the</p> <p>25 rule book; and sales and marketing plan.</p>

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<p style="text-align: right;">Page 41</p> <p>1 Q The "rule book" being the Rules of Conduct?</p> <p>2 A Correct.</p> <p>3 Q Okay. So after somebody would sign this,</p> <p>4 mail it into Herbalife, Herbalife would then send back</p> <p>5 that International business pack?</p> <p>6 A No.</p> <p>7 Q Okay. So then how was it that they would</p> <p>8 receive the International business pack?</p> <p>9 A They would receive it in a variety of ways.</p> <p>10 They could receive it from a distributor who meets</p> <p>11 them and discusses the business opportunity with them.</p> <p>12 Q Okay.</p> <p>13 A And that distributor would provide the kit</p> <p>14 at that moment.</p> <p>15 If an individual became aware of our</p> <p>16 business opportunity online, then in that case, yes,</p> <p>17 the kit would be mailed to them from Herbalife.</p> <p>18 Q Okay. But right now, I just want to focus</p> <p>19 in on these applications that were actually</p> <p>20 handwritten out and mailed back to Herbalife.</p> <p>21 A Um-hmm.</p> <p>22 Q Okay. So the way that they would receive</p> <p>23 the kit would be either from another distributor;</p> <p>24 right?</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 43</p> <p>1 sign up online; correct?</p> <p>2 A Correct.</p> <p>3 Q Okay. So how did they receive the</p> <p>4 International business pack?</p> <p>5 How would that have come to them, just</p> <p>6 solely through another distributor?</p> <p>7 A To the best of my knowledge, it would have</p> <p>8 been from their sponsor.</p> <p>9 Q And does their sponsor -- what is the</p> <p>10 process by which a sponsor gives them the</p> <p>11 International business pack?</p> <p>12 Is it after they fill out the application,</p> <p>13 they then give it to the sponsor?</p> <p>14 Obviously, not because they sent it to</p> <p>15 Herbalife, the application.</p> <p>16 A Well --</p> <p>17 MR. DROOKS: It is now compound and</p> <p>18 argumentative.</p> <p>19 BY MR. MARK:</p> <p>20 Q Okay. So how do they receive the</p> <p>21 International business pack?</p> <p>22 A They would receive it physically from their</p> <p>23 sponsor.</p> <p>24 Q After they signed the application?</p> <p>25 MR. CATLETT: Foundation.</p>
<p style="text-align: right;">Page 42</p> <p>1 Q Or would Herbalife send the kit or Herbalife</p> <p>2 would not send the kit?</p> <p>3 A If these applications were signed previous</p> <p>4 to our online ability for people to sign up online,</p> <p>5 they would have received it directly from the</p> <p>6 distributor.</p> <p>7 Q Okay. Do you know when Herbalife first</p> <p>8 permitted people to sign up online?</p> <p>9 A I don't recall.</p> <p>10 Q But obviously, Izaar and Felix Valdez did</p> <p>11 not sign up online; right? You can see that by the</p> <p>12 application?</p> <p>13 MR. DROOKS: It's vague as to time.</p> <p>14 THE WITNESS: That's true.</p> <p>15 BY MR. MARK:</p> <p>16 Q In other words, it is true that they didn't</p> <p>17 sign up online; right?</p> <p>18 It is not true that it is vague as to time.</p> <p>19 I am trying to understand.</p> <p>20 A I'm sorry. I am mistaken.</p> <p>21 Felix Valdez and Izaar Valdez, in 2008,</p> <p>22 submitted paper applications.</p> <p>23 Q Right.</p> <p>24 A That's correct.</p> <p>25 Q So they did not receive -- so they did not</p>	<p style="text-align: right;">Page 44</p> <p>1 THE WITNESS: It is kind of like the chicken</p> <p>2 or the egg; right? The application is within the kit.</p> <p>3 So whether they -- well, they would receive the kit,</p> <p>4 open it, take out the application; and complete it --</p> <p>5 BY MR. MARK:</p> <p>6 Q Oh, okay.</p> <p>7 A -- together.</p> <p>8 Q I understand. Okay.</p> <p>9 So the only way to get the paper application</p> <p>10 was, it is part of the kit?</p> <p>11 A Correct.</p> <p>12 Q Okay. Was the kit -- did the kit contain</p> <p>13 documents in Spanish or English or both?</p> <p>14 A We have a Spanish kit and an English kit.</p> <p>15 Q If the application is in Spanish, does that</p> <p>16 mean that the other documents in the kit are in</p> <p>17 Spanish, as well?</p> <p>18 A Correct.</p> <p>19 Q There are two different packs referenced</p> <p>20 here in paragraph 3(a) of Mr. and Mrs. Valdez's</p> <p>21 application, the International business pack and the</p> <p>22 mini IBP.</p> <p>23 What is the difference between the mini IBP</p> <p>24 and the IBP?</p> <p>25 A The difference is the product that is</p>

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<p style="text-align: right;">Page 45</p> <p>1 included within the kit. So in the full kit, the 2 person receives a full canister of product, and in the 3 mini kit, I believe they are only receiving sample 4 size products. 5 Q Okay. Are all the documents the same in 6 both kits? 7 A Yes. 8 Q Okay. Okay. Let's look at Exhibit 7, 9 please, which is Ms. Rodgers' application. 10 A Okay. 11 Q There were Rules of Conduct in effect at the 12 time of this application? 13 A Yes. 14 Q Okay. Now, this application does not 15 contain an arbitration provision; correct? 16 MR. DROOKS: The documents speaks for 17 itself. 18 BY MR. MARK: 19 Q Okay. You can answer the question. 20 MR. MARK: Please keep your objections to 21 form. Okay. 22 Go ahead. 23 THE WITNESS: Yeah, I would say that is 24 correct. 25</p>	<p style="text-align: right;">Page 47</p> <p>1 MR. DROOKS: That is not a viable objection. 2 I have to state what the objection is so that when the 3 Court reviews the transcript, the Court will know what 4 it is; and you are on notice as to how to correct it. 5 MR. MARK: Okay. We disagree. 6 MR. DROOKS: We may have a difference in 7 practice. 8 MR. MARK: It is not a difference in 9 practice. It is a difference in the local rules under 10 the Southern District of Florida. 11 Q Okay. Ms. Rodgers' application, that has 12 been marked as Exhibit 8; is that correct? 13 A 7. 14 Q I'm sorry. 7. 15 Okay. And Ms. Loken's application, what is 16 that exhibit? 17 A 8. 18 Q 8. Okay. 19 So you would agree that Ms. Loken's 20 application does not contain an arbitration provision; 21 correct? 22 A Yes, I agree. 23 Q Okay. And Ms. Rodgers' application does not 24 contain an arbitration provision; correct? 25 MR. DROOKS: What exhibit is that?</p>
<p style="text-align: right;">Page 46</p> <p>1 BY MR. MARK: 2 Q So you would agree with me that at the time 3 that she signed this application in June of 2010, 4 there was no arbitration agreement in effect; correct? 5 MR. DROOKS: Calls for a legal conclusion. 6 MR. MARK: Her whole affidavit is a legal 7 conclusion. Okay. 8 Go ahead. 9 THE WITNESS: I believe that's correct. 10 BY MR. MARK: 11 Q And the same goes for Ms. Loken; correct, if 12 you look at the next exhibit? 13 MR. DROOKS: Calls for a legal conclusion. 14 MR. MARK: Please keep your objections to 15 form. 16 MR. DROOKS: Calls for a legal conclusion. 17 MR. MARK: I don't know what the practice is 18 in Central District California. In the Southern 19 District of Florida, objection depositions are either 20 form or you can instruct the witness not to answer. 21 MR. DROOKS: Well, my understanding is that 22 calling for a legal conclusion is an objection to form 23 because it could be corrected in a way that would 24 allow you to avoid the objection. 25 MR. MARK: So just say, "Object to form."</p>	<p style="text-align: right;">Page 48</p> <p>1 MR. MARK: 7. 2 MR. DROOKS: What exhibit? 3 MR. MARK: 7. 7. 4 MR. DROOKS: Thank you. 5 THE WITNESS: I don't believe that I have 6 the entire application. I only -- it stops at 8 and 7 it does not include the entire clause. 8 BY MR. MARK: 9 Q I'm sorry, this is Ms. Loken's? 10 A Patricia Rodgers. 11 MR. MARK: Can I see? 12 MR. CATLETT: It should be a three-page 13 document. 14 MR. MARK: Yeah, three pages. Let me run a 15 copy of my version, which has the three pages. 16 THE WITNESS: Okay. 17 MR. MARK: Sorry about that. 18 THE WITNESS: No problem. 19 MR. MARK: Is there someone that can run a 20 copy for me? 21 MR. DROOKS: Sure. We have been going about 22 an hour. Let's take a five-minute break. I will get 23 you the copy, and if you have any other copies, I can 24 do it at the same time. 25 MR. MARK: I don't think I do, but you never</p>

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<p style="text-align: right;">Page 49</p> <p>1 know.</p> <p>2 MR. CATLETT: Are we off the record?</p> <p>3 MR. MARK: Yeah.</p> <p>4 (Recess.)</p> <p>5 MR. MARK: So, Counsel, I am going to add,</p> <p>6 this page was inadvertently omitted from Exhibit 7.</p> <p>7 It is the third page of Ms. Rodgers' application.</p> <p>8 MR. DROOKS: Sure.</p> <p>9 MR. MARK: Okay. I am going to add that to</p> <p>10 what has been previously marked as Exhibit 7.</p> <p>11 Q So now, can you confirm for me that that is</p> <p>12 a complete application for Ms. Rodgers?</p> <p>13 A Yes, it is a complete application.</p> <p>14 Q Okay. Thank you.</p> <p>15 This application was filled out online?</p> <p>16 A Yes, it was.</p> <p>17 MR. LEVINE: What did she say, Etan?</p> <p>18 MR. MARK: Said this application was filled</p> <p>19 out online.</p> <p>20 Q So, remember, earlier we were talking about</p> <p>21 the process by which those folks who had paper</p> <p>22 applications received the International business pack?</p> <p>23 A Yes.</p> <p>24 Q What is the process by which people who fill</p> <p>25 out applications online receive the International</p>	<p style="text-align: right;">Page 51</p> <p>1 Q And if you fill out the application online</p> <p>2 and the kit is mailed to you subsequently? You are</p> <p>3 not seeing the Rules of Conducts until the kit is</p> <p>4 mailed to you; is that correct?</p> <p>5 MR. DROOKS: That calls -- form. Objection</p> <p>6 as to form.</p> <p>7 MR. MARK: Very good. Thank you.</p> <p>8 Q You can answer.</p> <p>9 A The distributor has the opportunity to read</p> <p>10 the rules when they are signing up online.</p> <p>11 Q How does that work?</p> <p>12 A Through a link.</p> <p>13 Q So walk me through that.</p> <p>14 So you had this application online; right?</p> <p>15 A Yes.</p> <p>16 Q And you are filling it out. How do you then</p> <p>17 see the Rules of Conduct?</p> <p>18 A So the distributor acknowledges by signing</p> <p>19 this application that they have reviewed or will</p> <p>20 review the Rules of Conduct, which are provided online</p> <p>21 through a link.</p> <p>22 Q Where does it say that?</p> <p>23 A Okay. I believe that is cited in</p> <p>24 Clause 3(d) and also in Clause 4.</p> <p>25 Cause 3(d) states:</p>
<p style="text-align: right;">Page 50</p> <p>1 business pack?</p> <p>2 A To the best of my knowledge, the applicant</p> <p>3 could have received the pack in two various ways:</p> <p>4 One, when they go online, they have the</p> <p>5 option of purchasing the business pack at that time;</p> <p>6 but also, we have people that meet a distributor, and</p> <p>7 just the same as I described for the paper process,</p> <p>8 that distributor provides them with a kit; but</p> <p>9 perhaps, they don't want to fill out the paper</p> <p>10 application. They want to do it online</p> <p>11 electronically.</p> <p>12 So in this case, they could either get it</p> <p>13 from a distributor and fill the application out</p> <p>14 online, or they could just go online and purchase a</p> <p>15 kit at the same time that they are filling out the</p> <p>16 application.</p> <p>17 Q Oh, when they purchase a kit, that then</p> <p>18 triggers Herbalife to send the kit to that</p> <p>19 distributor?</p> <p>20 A That is correct.</p> <p>21 Q And in that kit, is the same items that we</p> <p>22 talked about earlier, it does not change; correct?</p> <p>23 A That's correct.</p> <p>24 Q Including the Rules of Conduct; correct?</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 52</p> <p>1 "I am aware that the only required</p> <p>2 purchase to become, succeed or</p> <p>3 advance as an Herbalife independent</p> <p>4 distributor is the mini</p> <p>5 International business pack. The</p> <p>6 mini IBP is a basic package</p> <p>7 containing only explanatory</p> <p>8 materials, forms and product sample</p> <p>9 packages."</p> <p>10 Q I'm sorry, what provision are you in?</p> <p>11 A I am in 3 and D. 3(d).</p> <p>12 Q Can I see the document that you are looking</p> <p>13 at, please?</p> <p>14 A Of course.</p> <p>15 Q Oh, okay. So I am actually looking at</p> <p>16 Ms. Rodgers' application.</p> <p>17 A Oh, I'm sorry.</p> <p>18 Q So let's look at that one; okay?</p> <p>19 A Okay.</p> <p>20 Q And Exhibit 7; right?</p> <p>21 A Yes.</p> <p>22 Q Is it your understanding that provision is</p> <p>23 in there, as well, Exhibit 7?</p> <p>24 A Yes.</p> <p>25 Q Okay. Where is that?</p>

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<p style="text-align: right;">Page 53</p> <p>1 A That is in also Clause 3(d). 2 Q Okay. 3 A "So I am aware" -- do you want me to -- 4 Q I'm sorry, I just don't -- oh, Clause 3. 5 Okay. I am on 3. I got it. 6 A And letter D. 7 Q Mine just says 3. 8 A Well, we have 3 and then we have got an A, 9 B, C, D. 10 Q Can I just make sure we are looking at the 11 same document? 12 A Um-hmm. Of course. 13 Q Okay. Okay. So 3, yup, "I am aware." Got 14 it. 15 A Okay. 16 And the Clause D says: "I will 17 review the statement of average 18 gross compensation of U.S. 19 supervisors and policy statements 20 on business methods, both of which 21 are contained in the mini IBP and 22 the IBP, and which are available on 23 myherbalife.com or upon request 24 from my sponsor or Herbalife's 25 Distributor Relations Department."</p>	<p style="text-align: right;">Page 55</p> <p>1 MR. DROOKS: Let -- the witness is still 2 answering the question. 3 BY MR. MARK: 4 Q Okay. 5 A Oh, I found it. 6 Q Okay. Good. 7 A It is Clause 3(a). 8 "So I hereby represent, warrant, 9 agree that upon my receipt of 10 Herbalife's mini or full 11 International business pack, I will 12 thoroughly review the contents of 13 the previously unopened pack." 14 Q I see. Okay. And within that pack includes 15 the Rules of Conduct? 16 A Exactly. 17 Q And earlier when you testified that you 18 understood there was a provision in this agreement 19 that provides that the distributor will review the 20 Rules of Conduct, that was the provision that you were 21 referring to? 22 A That's correct. 23 Q Okay. And am I correct that in some cases, 24 the distributor doesn't have physically in his or her 25 possession the Rules of Conduct at the time that they</p>
<p style="text-align: right;">Page 54</p> <p>1 Q Okay. But -- I'm sorry. 2 A Clause 4, just to continue. 3 Q Yes, please. 4 A "The Herbalife International 5 Business pack contains, among other 6 things: The Rules of conduct and 7 distributor policies, the sales and 8 marketing plan; ordering procedures 9 and sample forms. Those documents 10 and such other rules and policies 11 as Herbalife has published or in 12 the future may publish together 13 with such modifications and 14 amendments as Herbalife shall make, 15 from time to time, in its sole and 16 absolute discretion, collectively 17 the rules are each hereby 18 incorporated into this agreement, 19 each in their then most recently 20 published form." 21 Q Okay. 22 A And, I'm sorry, I know that doesn't answer 23 your question. Let me find that. 24 Q Right. Because I thought you said that 25 there was a provision --</p>	<p style="text-align: right;">Page 56</p> <p>1 sign this application? 2 A It depends on how you define "physically." 3 Q Okay. How do you define it? 4 A If they are online submitting an 5 application, they had access to the Rules of Conduct 6 online; and also they are able to print them, if they 7 wish. 8 Q Okay. Does it say here how to access the 9 Rules of Conduct online? 10 A I believe so. 11 Q Where is that? 12 A I believe your question is answered with 13 No. 4 for technical requirements. 14 Q Okay. 15 A I will have to read it to see if it answers 16 your question. 17 Q Sure. Please read. 18 A "The technical requirements to access" -- 19 Q If you want to read that out loud, you're 20 welcome to; but you don't have to. 21 A Okay. Let me read it to myself. 22 Q Sure. 23 A I don't see that in this version of the 24 application. 25 Q Okay. So how does a distributor access the</p>

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<p style="text-align: right;">Page 57</p> <p>1 Rules of Conduct online as of June of 2010?</p> <p>2 A On myherbalife.com.</p> <p>3 Q Okay. So after the distributor completes</p> <p>4 this application, what does it look like to -- how do</p> <p>5 you access the Rules of Conduct?</p> <p>6 I know it is obviously on myherbalife.com.</p> <p>7 This application is completed on</p> <p>8 myherbalife.com; right?</p> <p>9 A Correct.</p> <p>10 Q Okay. So then how do you then get to the</p> <p>11 Rules of Conduct from this application?</p> <p>12 A It is my understanding that we provide a</p> <p>13 link within the application.</p> <p>14 Q Okay. But there is no link within this</p> <p>15 application; is there, to the Rules of Conduct?</p> <p>16 A Not that I can see on this printed version.</p> <p>17 Q Okay.</p> <p>18 A But that doesn't mean that there is not a</p> <p>19 link available.</p> <p>20 Q Well, what is a link? I mean, is it a</p> <p>21 hyperlink or is it a button?</p> <p>22 What does it look like, the link, if you</p> <p>23 know?</p> <p>24 A I don't know.</p> <p>25 Q Okay. So you don't know whether -- you know</p>	<p style="text-align: right;">Page 59</p> <p>1 distributorship, and then you see the next page of the</p> <p>2 agreement of distributorship; is that how it looks?</p> <p>3 A I believe so.</p> <p>4 Q Okay. And once the applicant signs</p> <p>5 electronically the first page of this document that</p> <p>6 has been marked as Exhibit 7, is there anything else</p> <p>7 that the applicant has to do to submit her application</p> <p>8 for distributorship?</p> <p>9 A No.</p> <p>10 Q Now, on the third page of Exhibit 7, there</p> <p>11 is a provision that says:</p> <p>12 "Herbalife electronic disclosure</p> <p>13 agreement and online distributor</p> <p>14 application and agreement."</p> <p>15 Do you see that?</p> <p>16 A Yes.</p> <p>17 Q Okay.</p> <p>18 And it says, "By clicking, I agree</p> <p>19 below," et cetera, et cetera.</p> <p>20 Do you see that?</p> <p>21 A Yes.</p> <p>22 Q Is there a -- is there a button on the</p> <p>23 bottom of this that normally appears that says, "I</p> <p>24 agree"?</p> <p>25 A I am not sure where the button is located,</p>
<p style="text-align: right;">Page 58</p> <p>1 that the Rules of Conduct were available online as of</p> <p>2 June, 2010; correct?</p> <p>3 A Correct.</p> <p>4 Q But you don't know exactly how it is that a</p> <p>5 distributor can access those Rules of Conduct from</p> <p>6 this application?</p> <p>7 A My understanding is that they are provided</p> <p>8 with a link and that they click that link, which</p> <p>9 carries them to the Rules of Conduct.</p> <p>10 Q Okay. But that link is nowhere to be seen</p> <p>11 on Exhibit 7; correct?</p> <p>12 A I don't see that link in Exhibit 7.</p> <p>13 Q And nor is it on Exhibit 8; correct?</p> <p>14 A Correct, nor is it on Exhibit 7.</p> <p>15 Q Okay. And on --</p> <p>16 A I'm sorry, Exhibit 8.</p> <p>17 Q Thank you.</p> <p>18 And on both Exhibits 7 and 8, there is a</p> <p>19 place for a signature on the first page; correct?</p> <p>20 A Correct.</p> <p>21 Q And then how is it, then, the applicant gets</p> <p>22 to the agreement of distributorship itself when you</p> <p>23 are looking at it online?</p> <p>24 Is it literally just a screen that you</p> <p>25 scroll down and you see the agreement of</p>	<p style="text-align: right;">Page 60</p> <p>1 but where the distributor signs on page 1.</p> <p>2 Q Yes.</p> <p>3 A "By executing the application,</p> <p>4 The distributor acknowledges that</p> <p>5 he/she has reviewed the terms and</p> <p>6 conditions on the reverse side of</p> <p>7 the application and agrees to be</p> <p>8 bound by them."</p> <p>9 Q Right. So -- and I appreciate that, but</p> <p>10 what I am wondering is are you aware of any kind of --</p> <p>11 it says, "By clicking, I agree below."</p> <p>12 I am wondering if there is a button that the</p> <p>13 distributor clicks or the applicant clicks, which then</p> <p>14 submits the application to Herbalife electronically,</p> <p>15 if you know?</p> <p>16 A I don't know if it is a button or a link. I</p> <p>17 don't know what it looks like online.</p> <p>18 Q But is there some kind of a submit button or</p> <p>19 an okay button?</p> <p>20 A There is something, yes.</p> <p>21 Q Okay. And that is not on the first page of</p> <p>22 the application; that is at the end of the application</p> <p>23 after the electronic disclosure agreement?</p> <p>24 A I wouldn't know.</p> <p>25 Q Okay.</p>

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<p style="text-align: right;">Page 61</p> <p>1 And this statement: "By executing 2 the application, distributor 3 acknowledges that he/she has 4 reviewed the terms and conditions 5 on the reverse side of the 6 application." 7 There is no reverse side of this 8 application; is there? 9 A You're correct. 10 Q And is it your position that they are bound 11 by the terms -- by the Rules of Conduct that are in 12 effect at the time that they signed the application? 13 MR. DROOKS: Yeah, that is a contention 14 interrogatory. That is a contention question. The 15 witness is not a PMQ. 16 I will instruct her not to answer. 17 MR. MARK: Okay. 18 MR. DROOKS: You can ask her her 19 understanding. 20 BY MR. MARK: 21 Q Is it your understanding that at the time 22 that they signed this application, they are bound by 23 the Rules of Conduct in effect as of the date that 24 they signed the application? 25 A As of the date we accept their application,</p>	<p style="text-align: right;">Page 63</p> <p>1 is in the current Rules of Conduct, but it is not 2 entitled 8(c). 3 Q Okay. We will get to that later. Okay? 4 A Um-hmm. 5 Q Looking at what has been marked as 6 Exhibits 10 and 11, that's Mr. Pyle and Ms. Lavigne; 7 right? 8 A Yes, that's correct. 9 Q Is there any kind of click to agree in this 10 application? 11 A It's not visible to me on this printout, but 12 it's visible -- something is visible to the applicant 13 on the screen. 14 Q Okay. So let's go through it. 15 So 10 and 11, those are the same -- those 16 are the same versions of the distributorship 17 application; right? They are both Version 43, it 18 looks like, in English? 19 A Yes, that's correct. 20 Q Okay. So let's just look at Mr. Pyle's 21 Exhibit 10. Then I will assume that your answers 22 apply to Exhibit 11; okay? 23 A Okay. 24 Q If they don't, just let me know. 25 So on the first page, there is a place for</p>
<p style="text-align: right;">Page 62</p> <p>1 they are bound by the rules that -- yes, the current 2 rules that are -- that are published. 3 And one of our rules stipulates that the 4 distributor should stay informed of our current 5 policies and will abide and comply with our rules and 6 the law. 7 Q And that is Rule 8(c); is that correct? 8 A A portion of 8(c), yes. 9 Q But is that the rule you were referring to, 10 the portion of 8(c)? 11 A One of the rules, yes. 12 Q Is there another rule besides 8(c) that 13 provides that? 14 A There is one rule, 8(c), which stipulates: 15 "The distributor should stay 16 informed of our current rules and 17 abide by them." 18 And then there is another rule that states: 19 "Distributors must comply with our 20 rules and the law." 21 Q What rule is that? 22 A I'm sorry, I don't recall the number. 23 Q Okay. Is Rule 8(c) in the current version 24 of the Rules of Conduct? 25 A I believe that language or similar language</p>	<p style="text-align: right;">Page 64</p> <p>1 the applicant's signature; correct? 2 A That's correct. 3 Q Okay. And that is an electronic signature, 4 they type in their name; right? 5 A Correct. 6 Q Now, on the second page of the application 7 where it states, "Gold Standard Guarantees," there are 8 a number of provisions that say, "I have read and 9 understood this message." 10 Do you see that? 11 A Correct. 12 Q Are there little boxes to check next to each 13 of those statements? 14 A That's correct. 15 Q Okay. Are they actually check boxes or do 16 you click, "I have read and understood"; I have read 17 and understood"? 18 A I -- I don't recall. 19 Q Okay. And then the next page is a Statement 20 of Average Gross Compensation paid by Herbalife to 21 U.S. members in 2013; right? 22 A Yes. 23 Q Is there any kind of click to agree or I 24 understand with respect to that statement? 25 A Yes.</p>

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<p style="text-align: right;">Page 65</p> <p>1 Q Where is that?</p> <p>2 A That's No. 6 on the previous page, the Gold</p> <p>3 Standard Guarantees.</p> <p>4 Q Okay. Where does it say that -- oh, it</p> <p>5 says, I understand -- I see. I understand. Okay.</p> <p>6 A Correct. Um-hmm.</p> <p>7 Q I see. So that check next to No. 6 applies</p> <p>8 to the Statement of Average Gross Compensation on the</p> <p>9 next page?</p> <p>10 A Correct.</p> <p>11 Q And then it states, after No. 6:</p> <p>12 "To see all of your rights and</p> <p>13 obligations as an Herbalife member,</p> <p>14 please review Herbalife's Rules of</p> <p>15 Conduct in your member pack or</p> <p>16 visit myherbalife.com."</p> <p>17 Did I read that correctly?</p> <p>18 A Yes.</p> <p>19 Q And there is an actual hyperlink to</p> <p>20 myherbalife.com; correct?</p> <p>21 A Correct.</p> <p>22 Q Is there a link to the Herbalife Rules of</p> <p>23 Conduct?</p> <p>24 A Directly to the Rules of Conduct?</p> <p>25 Q Yes.</p>	<p style="text-align: right;">Page 67</p> <p>1 where it says, click to agree or accept or anything</p> <p>2 like that, as we have seen on the previous three</p> <p>3 pages?</p> <p>4 A I believe that there is near D, Electronic</p> <p>5 Disclosures.</p> <p>6 Q Okay. So you are on page 749 of 771; right?</p> <p>7 Where it says, "Electronic disclosures"?</p> <p>8 A Yes, correct.</p> <p>9 Q Okay. So you think that somewhere on D --</p> <p>10 on that section D, there is a button to click?</p> <p>11 A To the best of my recollection, yes.</p> <p>12 Q And where is that button?</p> <p>13 A Well, it's not showing on this printout.</p> <p>14 Q Right.</p> <p>15 A But the person sees it on the screen.</p> <p>16 Q And it would be after paragraph 1, "Consent</p> <p>17 to Electronic Disclosures"?</p> <p>18 A I would be guessing if I told you where it</p> <p>19 was located.</p> <p>20 Q Okay. So you think that there is a button</p> <p>21 somewhere on this page, you're not sure where?</p> <p>22 A Correct.</p> <p>23 Q And prior to Herbalife accepting the</p> <p>24 application, are they required to consent to</p> <p>25 Electronic Disclosures?</p>
<p style="text-align: right;">Page 66</p> <p>1 A I don't know.</p> <p>2 Q Okay. Well, how --</p> <p>3 A I believe this routes directly to the Rules</p> <p>4 of Conduct.</p> <p>5 Q You believe that the hyperlink that says</p> <p>6 "myherbalife.com" actually links directly to the Rules</p> <p>7 of Conduct?</p> <p>8 A I believe so.</p> <p>9 Q Okay. Are you certain about that or are you</p> <p>10 speculating?</p> <p>11 MR. DROOKS: Form.</p> <p>12 BY MR. MARK:</p> <p>13 Q You can answer.</p> <p>14 A I am not certain technically how it works,</p> <p>15 but I do know that we provide a PDF specifically of</p> <p>16 the Rules of Conduct, which is linked directly to this</p> <p>17 application.</p> <p>18 And so it is my understanding that this link</p> <p>19 will take the user directly to the rules document.</p> <p>20 Q Okay. And if you look at the page, the next</p> <p>21 page that begins with, "A membership," do you see</p> <p>22 that? It is in two pages.</p> <p>23 A Yes.</p> <p>24 Q Is there any place as you go through the</p> <p>25 next eight or nine pages of this document where you --</p>	<p style="text-align: right;">Page 68</p> <p>1 MR. DROOKS: By "they," you mean --</p> <p>2 BY MR. MARK:</p> <p>3 Q Prior to Herbalife accepting this</p> <p>4 application, is the applicant required to consent to</p> <p>5 the Electronic Disclosures?</p> <p>6 A I don't know the answer to that question.</p> <p>7 Q Prior to Herbalife accepting this</p> <p>8 application, is it required that the applicant click</p> <p>9 each of the options on the second page of this</p> <p>10 document that states, "I have read and understood this</p> <p>11 message"?</p> <p>12 A That's correct.</p> <p>13 Q But you're not aware of any other point on</p> <p>14 this application that is required for the applicant to</p> <p>15 click in order to submit the application to Herbalife</p> <p>16 other than on the first two pages; is that correct?</p> <p>17 A Correct.</p> <p>18 Q Let's look at your declaration.</p> <p>19 Paragraph 6, it states:</p> <p>20 "Herbalife distributor Rules of</p> <p>21 Conduct, defined as rules, together</p> <p>22 with the distributor agreement,</p> <p>23 among other documents, provide the</p> <p>24 terms and conditions under which a</p> <p>25 distributor must operate his or her</p>

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<p style="text-align: right;">Page 69</p> <p>1 Herbalife distributorship." 2 Did I read that correctly? 3 A Yes. 4 Q So is it your understanding that 5 distributors are bound by the provisions of the Rules 6 of Conduct? 7 A Yes. 8 Q And it is by the provisions of the Rules of 9 Conduct in effect at that -- at the moment; correct? 10 A Yes. 11 Q And going back to Ms. Rodgers' application, 12 let's look at paragraph 4, which you read before 13 talking about the documents that are incorporated; -- 14 A Yes. 15 Q -- right? 16 Okay. So -- so tell me, please, which 17 documents are incorporated into an application for 18 distributorship? 19 MR. CATLETT: Form and foundation. 20 THE WITNESS: Any policy document that 21 Herbalife publishes is incorporated. 22 BY MR. MARK: 23 Q And how does Herbalife publish these policy 24 documents? 25 A We have a number of different materials</p>	<p style="text-align: right;">Page 71</p> <p>1 is that? 2 A Distributor policies are the rules and the 3 clauses on our membership application, clauses on 4 other forms, information included in announcements. 5 Q Anything else that you think fall into 6 distributor policies? 7 A Not that I can think of. 8 Q Okay. And the sales and marketing plan, 9 what is that? 10 A The sales and marketing plan describes the 11 business model. 12 Q And is that also incorporated into each of 13 the applications? 14 A Yes. 15 Q Ordering procedures? 16 A Yes. 17 Q What is that? 18 A Ordering procedures provides members with 19 information as to how to place an order, what time 20 frames to place an order. General information, fax 21 numbers, phone numbers, warehouse information. 22 Q And those are also incorporated into the 23 applications? 24 A Yes. 25 Q And those are part of the documents that</p>
<p style="text-align: right;">Page 70</p> <p>1 which could be our -- before our rule book, Rules of 2 Conduct. It could be on the membership application. 3 It could be in any other agreement that we require our 4 distributors to sign. It could be in an announcement 5 that we have made to our members about a policy. 6 Q An announcement, an oral announcement or a 7 written announcement? 8 A The announcements would -- do take place 9 orally and -- and written. 10 Q Okay. And are all of these announcements 11 available on myherbalife.com? 12 A Yes. 13 Q Okay. Are all of the policies that bind -- 14 let me try that again. 15 All policies to which distributors are bound 16 are found on myherbalife.com? 17 MR. DROOKS: Objection as to form. Legal 18 conclusion. 19 BY MR. MARK: 20 Q You can answer. 21 A I would say, yes. 22 Q So we talked about the Rules of Conduct, 23 that is Book 4; is that how you -- 24 A Yes. 25 Q Okay. What are distributor policies? What</p>	<p style="text-align: right;">Page 72</p> <p>1 form the agreement between Herbalife and an applicant? 2 A Correct. 3 MR. DROOKS: Form. 4 BY MR. MARK: 5 Q And sample forms, what is that? What are 6 sample forms? 7 A There is a section in the book that includes 8 a sample of the various forms. 9 Q The various -- 10 A For reference and sometimes some of the 11 forms that a distributor can photocopy it in order to 12 use it. 13 Q And are those sample forms part of the 14 documents that are incorporated into this agreement of 15 distributorship? 16 MR. DROOKS: Form. 17 THE WITNESS: Correct. 18 BY MR. MARK: 19 Q And are those documents the terms and 20 conditions under which a distributor must operate his 21 or her Herbalife distributorship? 22 MR. DROOKS: Form. 23 THE WITNESS: Correct. 24 BY MR. MARK: 25 Q Well, that is what you stated in your</p>

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<p style="text-align: right;">Page 73</p> <p>1 declaration; correct?</p> <p>2 In paragraph 6 in your declaration you state</p> <p>3 that:</p> <p>4 "Herbalife's Rules of Conduct,</p> <p>5 together with a distributor</p> <p>6 agreement, among other documents,</p> <p>7 provide the terms and conditions</p> <p>8 under which a distributor must</p> <p>9 operate his or her Herbalife</p> <p>10 distributorship"; correct?</p> <p>11 A That's correct.</p> <p>12 Q Okay. So I want to just make sure I</p> <p>13 understand the universe of documents that comprise</p> <p>14 those terms and conditions under which a distributor</p> <p>15 must operate his or her Herbalife distributorship;</p> <p>16 okay?</p> <p>17 A Yes.</p> <p>18 Q Okay. So those documents include the Rules</p> <p>19 of Conduct; correct?</p> <p>20 A Correct.</p> <p>21 Q The distributor policies?</p> <p>22 A Correct.</p> <p>23 Q The sales and marketing plan?</p> <p>24 A Correct.</p> <p>25 Q The ordering procedures?</p>	<p style="text-align: right;">Page 75</p> <p>1 published form?</p> <p>2 MR. DROOKS: Form.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MR. MARK:</p> <p>5 Q Now, later in these applications, it</p> <p>6 states -- and if you look at Ms. Rodgers' application,</p> <p>7 for example --</p> <p>8 MR. DROOKS: Yeah, that is compound. It's a</p> <p>9 different --</p> <p>10 BY MR. MARK:</p> <p>11 Q If you look at Ms. Rodgers' application --</p> <p>12 A Um-hmm.</p> <p>13 Q -- Exhibit 7?</p> <p>14 A Yes, third page.</p> <p>15 Q Okay. If you look at the third page, you</p> <p>16 will see paragraph 12(b).</p> <p>17 Do you see that paragraph?</p> <p>18 A Yes.</p> <p>19 Q And it states:</p> <p>20 "This agreement, including</p> <p>21 documents incorporated herein in</p> <p>22 their then published form."</p> <p>23 Do you see that?</p> <p>24 MR. DROOKS: Can I have an exhibit number on</p> <p>25 that, so we can follow along?</p>
<p style="text-align: right;">Page 74</p> <p>1 A Correct.</p> <p>2 Q The sample forms?</p> <p>3 A Correct.</p> <p>4 Q And then other rules and policies --</p> <p>5 A Correct.</p> <p>6 Q -- that are available on myherbalife.com?</p> <p>7 A Correct.</p> <p>8 Q Okay. As you sit here today, are there any</p> <p>9 other -- are there any other terms and conditions</p> <p>10 under which a distributor must operate his or her</p> <p>11 Herbalife distributorship, other than those that I</p> <p>12 just listed?</p> <p>13 MR. DROOKS: Form.</p> <p>14 BY MR. MARK:</p> <p>15 Q That you are aware of?</p> <p>16 A No.</p> <p>17 Q And each of those documents are incorporated</p> <p>18 into these applications in their most recently</p> <p>19 published form; is that correct?</p> <p>20 MR. DROOKS: Form.</p> <p>21 THE WITNESS: Can you repeat that?</p> <p>22 BY MR. MARK:</p> <p>23 Q Yeah.</p> <p>24 Each of those agreements are incorporated</p> <p>25 into these applications in their most recently</p>	<p style="text-align: right;">Page 76</p> <p>1 MR. MARK: 7.</p> <p>2 MR. DROOKS: 7.</p> <p>3 BY MR. MARK:</p> <p>4 Q Do you see the "then published form"? Do</p> <p>5 you see that?</p> <p>6 A I'm sorry, where were we?</p> <p>7 Q 12(b).</p> <p>8 A Oh, yeah. 12(b), yes.</p> <p>9 Q What does "in their then published form"</p> <p>10 mean?</p> <p>11 MR. CATLETT: Form and foundation.</p> <p>12 MR. DROOKS: Form. Foundation.</p> <p>13 THE WITNESS: To my understanding?</p> <p>14 BY MR. MARK:</p> <p>15 Q If you know what that means, yeah.</p> <p>16 A My understanding is the current form at that</p> <p>17 time.</p> <p>18 Q At the time that this application is signed?</p> <p>19 MR. CATLETT: Same objections.</p> <p>20 MR. DROOKS: Same objections. Form.</p> <p>21 THE WITNESS: No.</p> <p>22 BY MR. MARK:</p> <p>23 Q So what does it mean?</p> <p>24 A The most current, whatever is the most</p> <p>25 current at any date in time.</p>

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<p style="text-align: right;">Page 77</p> <p>1 Q Okay. So when it states, "including 2 documents incorporated herein in their then published 3 form," that, to you, means the same thing as "the most 4 recently published form"; is that correct? 5 A No. 6 Q They mean different things? 7 A My understanding is that this refers to the 8 document's most recently published form. So at any 9 given date in time, whatever the current form of that 10 particular document is, is what this is applying to. 11 That's my understanding. 12 Q So "then published form," to you, means the 13 same thing as "most recently published form"? 14 I am not trying to trick you. I am just 15 trying to understand because there is two different -- 16 the language is different in two different parts of 17 the application. 18 I am trying to understand if it is intended 19 to mean the same thing or if they mean two different 20 things. 21 MR. DROOKS: It's argumentative. 22 THE WITNESS: I think "most recently 23 published form" can also mean the same as "in their 24 then published form." 25</p>	<p style="text-align: right;">Page 79</p> <p>1 A Yes. 2 Q Okay. You talked about the myherbalife.com 3 website in your affidavit in paragraph 7. 4 Do you see that? 5 A I see paragraph 7. 6 Q In your declaration? 7 "Yes"? 8 A (Witness nods head.) 9 Q And you see there is a footnote; right, 10 which talks about myherbalife.com? 11 A Yes. 12 Q Can you tell me a little bit about 13 myherbalife.com. I know, obviously, it is a website, 14 but what is it for? And what is the purpose of 15 myherbalife.com? 16 MR. DROOKS: Form. Compound. 17 BY MR. MARK: 18 Q What is the purpose of myherbalife.com? 19 A Myherbalife.com is a tool for distributors 20 to use. 21 Q Anything else? 22 A It includes the Rules of Conduct. It 23 includes areas on the site where the distributor can 24 track their progress, see how many volume points they 25 have, look at their royalties; and their earnings; and</p>
<p style="text-align: right;">Page 78</p> <p>1 BY MR. MARK: 2 Q Okay. 3 A My understanding of both terminologies is 4 that the distributor is bound by whatever, at any 5 given date and time, whatever the rules are at that 6 time. 7 Q And it is your understanding that "then 8 published form" means the same thing as "most recently 9 published form"? 10 A I don't know how to better describe my 11 answer than to say this includes future versions of 12 the language. 13 Q So "then published form" includes future 14 versions of the documents? 15 A Yes. 16 Q Those categories of documents that we talked 17 about that were incorporated by reference into these 18 agreements, are they the same for each application? 19 Are there categories of documents that are 20 incorporated into certain applications, but not other 21 applications? 22 A No. 23 Q It's the same? 24 A (Witness nods head.) 25 Q "Yes"?</p>	<p style="text-align: right;">Page 80</p> <p>1 other information for distributors to use in order to 2 build their business. 3 Q Is it an important tool for a distributor? 4 MR. CATLETT: Form. 5 MR. DROOKS: Speculative. Form. 6 BY MR. MARK: 7 Q You can answer. 8 A I would say yes. 9 Q Can you participate in the Herbalife 10 business opportunity without using the website? 11 A If you sign up online, no. 12 Q And it is your con -- well, is it your 13 understanding that you are actually required to stay 14 apprised of the myherbalife.com website, that is one 15 of the requirements to be a distributor? 16 A I would rephrase that a little bit to say, 17 it's my understanding that the distributor has to stay 18 apprised of the Rules of Conduct. 19 Q And the Rules of Conduct are only available 20 in their current form through myherbalife.com; is that 21 correct? 22 MR. CATLETT: Form. 23 THE WITNESS: Can you rephrase that? 24 BY MR. MARK: 25 Q You -- you said that Herbalife -- that</p>

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<p style="text-align: right;">Page 81</p> <p>1 distributors are required to stay apprised of the</p> <p>2 updated versions of the Rules of Conduct through</p> <p>3 myherbalife.com; right?</p> <p>4 A Yes.</p> <p>5 Q Is there any other obligation, in your mind,</p> <p>6 for distributors to go to myherbalife.com?</p> <p>7 A Obligation, no.</p> <p>8 Q Okay. After Ms. Rodgers signed her</p> <p>9 application, and after Ms. Loken signed her</p> <p>10 application, the Rules of Conduct were amended;</p> <p>11 correct?</p> <p>12 A Yes.</p> <p>13 Q And they were amended to include an</p> <p>14 arbitration provision; correct, among other things?</p> <p>15 A I believe the amendment occurred prior to</p> <p>16 the date they signed their application.</p> <p>17 Q The --</p> <p>18 A Oh, I beg your pardon. You're correct.</p> <p>19 After they signed their application, they were</p> <p>20 amended.</p> <p>21 MR. MARK: I will hand you a document that I</p> <p>22 will mark as Exhibit 12.</p> <p>23 (Exhibit 12 marked.)</p> <p>24 MR. DROOKS: Is that somewhere that --</p> <p>25 MR. MARK: Yes. I am going to tell you</p>	<p style="text-align: right;">Page 83</p> <p>1 MR. MARK: So I am going to hand you a</p> <p>2 document that we will mark as the next exhibit.</p> <p>3 THE REPORTER: 13.</p> <p>4 MR. MARK: 13.</p> <p>5 (Exhibit 13 marked.)</p> <p>6 THE WITNESS: Thank you.</p> <p>7 BY MR. MARK:</p> <p>8 Q So I will represent to you that Exhibits 12</p> <p>9 and 13 that I have handed you together comprise</p> <p>10 Exhibit B to your declaration; okay?</p> <p>11 A Yes.</p> <p>12 Q And if you look at Exhibit 13, is it your</p> <p>13 understanding that the advisory dated February 13,</p> <p>14 2014, was part of Exhibit 12?</p> <p>15 A Yes, that's correct.</p> <p>16 Q Okay. And it is your -- is it your</p> <p>17 understanding that this amendment applied to those</p> <p>18 existing distributors?</p> <p>19 A Yes, to all distributors.</p> <p>20 Q Including those that predated the date of</p> <p>21 this amendment; correct?</p> <p>22 A Yes, that's correct.</p> <p>23 Q Okay. And that is because Herbalife retains</p> <p>24 the right to change the terms of its agreement with</p> <p>25 its distributors by amending the Rules of Conduct?</p>
<p style="text-align: right;">Page 82</p> <p>1 where it is.</p> <p>2 Q Well, can you identify this document?</p> <p>3 MR. DROOKS: I would really like to have a</p> <p>4 copy of it before we start questioning the witness</p> <p>5 about it.</p> <p>6 MR. MARK: Sure. Here.</p> <p>7 Q Can you identify it?</p> <p>8 A This is an announcement provided by the</p> <p>9 company.</p> <p>10 Q What is the date of the announcement?</p> <p>11 A I don't see a date here.</p> <p>12 Q If you look at your declaration,</p> <p>13 paragraph 7, the second part of that, let me give you</p> <p>14 this -- the second part of that states:</p> <p>15 "On February 13, 2014, Herbalife</p> <p>16 also sent a notification to all</p> <p>17 distributors of the recent changes</p> <p>18 to the rules, including the</p> <p>19 addition of the arbitration</p> <p>20 provision. A complete and</p> <p>21 authentic copy of that notice is</p> <p>22 attached hereto as Exhibit B."</p> <p>23 Do you see that?</p> <p>24 A Yes, I do.</p> <p>25 Q Okay.</p>	<p style="text-align: right;">Page 84</p> <p>1 A That's correct.</p> <p>2 MR. DROOKS: Objection as to form.</p> <p>3 BY MR. MARK:</p> <p>4 Q Can Herbalife make these changes at any</p> <p>5 time?</p> <p>6 A Yes.</p> <p>7 MR. DROOKS: Objection to form.</p> <p>8 MR. MARK: "Yes"?</p> <p>9 THE WITNESS: Yes.</p> <p>10 MR. DROOKS: Legal conclusion.</p> <p>11 BY MR. MARK:</p> <p>12 Q Are there any restrictions, to your</p> <p>13 knowledge, on Herbalife's ability to make these</p> <p>14 changes to the documents?</p> <p>15 MR. DROOKS: Objection as to form.</p> <p>16 BY MR. MARK:</p> <p>17 Q You can answer.</p> <p>18 A Can you rephrase the question?</p> <p>19 Q Are there any restrictions, to your</p> <p>20 knowledge, on Herbalife's ability to make these</p> <p>21 amendments?</p> <p>22 A These amendments?</p> <p>23 Q Yeah, any amendments.</p> <p>24 MR. DROOKS: Objection as to form.</p> <p>25 MR. CATLETT: And foundation.</p>

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<p style="text-align: right;">Page 85</p> <p>1 BY MR. MARK:</p> <p>2 Q You testified that Herbalife can amend the</p> <p>3 documents at any time; correct?</p> <p>4 A Um-hmm. Yes.</p> <p>5 Q Okay. And it can do so -- are there any</p> <p>6 restrictions on its ability to do so, to your</p> <p>7 knowledge?</p> <p>8 A Yes.</p> <p>9 Q And what are those restrictions?</p> <p>10 A We are bound by an agreement that we made</p> <p>11 with our distributors that we will not make changes to</p> <p>12 our sales and marketing plan in any way that will</p> <p>13 be -- impact the way that -- that their -- that they</p> <p>14 have been able to earn with our marketing -- sales and</p> <p>15 marketing plan.</p> <p>16 Q Okay. So there is a restriction on</p> <p>17 Herbalife's ability to amend its sales and marketing</p> <p>18 plan; is that correct?</p> <p>19 MR. DROOKS: Calls for -- form.</p> <p>20 THE WITNESS: Let me say there is parameters</p> <p>21 as to how we make certain changes to our sales and</p> <p>22 marketing plan.</p> <p>23 BY MR. MARK:</p> <p>24 Q Okay. Are there any parameters as to</p> <p>25 Herbalife's ability to amend the Rules of Conduct, to</p>	<p style="text-align: right;">Page 87</p> <p>1 A No.</p> <p>2 Q Okay. When did they first become effective?</p> <p>3 A When we published them --</p> <p>4 Q And when did you --</p> <p>5 A -- online, which was, I believe, in advance</p> <p>6 of this advisory being published.</p> <p>7 Q And when was -- when was that?</p> <p>8 A So let me see, I believe it was in October</p> <p>9 of 2013.</p> <p>10 Q And what forms the basis of that</p> <p>11 understanding?</p> <p>12 A I just recall that in reviewing materials in</p> <p>13 preparation for my declaration.</p> <p>14 Q Okay. So -- and if you look in your</p> <p>15 declaration, you see in paragraph 7 it states:</p> <p>16 "This version of the rules and the</p> <p>17 arbitration provision were readily</p> <p>18 available to distributors online</p> <p>19 through myherbalife.com on</p> <p>20 October 28, 2013."</p> <p>21 A Correct.</p> <p>22 Q Okay. So it is your understanding that --</p> <p>23 that these amendments that are reflected in</p> <p>24 Exhibit 13, first became effective on October 28,</p> <p>25 2013, when they were published on the Herbalife</p>
<p style="text-align: right;">Page 86</p> <p>1 your knowledge?</p> <p>2 A No.</p> <p>3 Q And when are the changes -- well, let's</p> <p>4 start with this one, Exhibit 12.</p> <p>5 When do these changes become effective? In</p> <p>6 other words, when do they first apply to the</p> <p>7 distributors?</p> <p>8 MR. CATLETT: Form and foundation.</p> <p>9 THE WITNESS: Upon publication.</p> <p>10 BY MR. MARK:</p> <p>11 Q Okay. And when were these amendments</p> <p>12 published?</p> <p>13 A Well, it states in this advisory that these</p> <p>14 rules became available in our warehouses and could be</p> <p>15 accessed online --</p> <p>16 Q You are looking at Exhibit --</p> <p>17 A -- around --</p> <p>18 Q -- 13 --</p> <p>19 A -- February 13th of 2014.</p> <p>20 Q Okay. So you are looking at Exhibit 13; is</p> <p>21 that correct?</p> <p>22 A Correct.</p> <p>23 Q So -- so the changes that are reflected in</p> <p>24 Exhibit 13 first became effective on February 13,</p> <p>25 2014?</p>	<p style="text-align: right;">Page 88</p> <p>1 website?</p> <p>2 A That's correct.</p> <p>3 Q And that is myherbalife.com; right?</p> <p>4 A Yes.</p> <p>5 Q Was there any notification to distributors</p> <p>6 at that time that the rules were changing?</p> <p>7 A Not -- that I can recall.</p> <p>8 Q Exhibit 12 is the first notification of --</p> <p>9 to distributors of this change; correct?</p> <p>10 A It is possible that we may have made a</p> <p>11 verbal announcement to our distributor leadership in</p> <p>12 advance of the advisory being published. So a verbal</p> <p>13 announcement is very possible in advance of the</p> <p>14 October date.</p> <p>15 Q And you said "distributor leadership"; is</p> <p>16 that what you said?</p> <p>17 A Yes.</p> <p>18 Q Who is that?</p> <p>19 A So our President Team members.</p> <p>20 Q Okay. Other than -- other than the</p> <p>21 potential announcement to President Team members, are</p> <p>22 you aware of any other announcement of these</p> <p>23 amendments to the distributorship relationship prior</p> <p>24 to February 13, 2014?</p> <p>25 A No.</p>

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<p style="text-align: right;">Page 89</p> <p>1 Q And is it your -- do you believe that when 2 these new rules were first posted on the website in 3 October of 2013, that those replaced the earlier 4 versions of the Rules of Conduct? 5 A Yes. 6 Q Do you know why it took four months between 7 the posting of the rules in October of 2013 and the 8 February 13, 2014 announcement? 9 A As I recall, we were making quite a few 10 changes at that time, and rather than sending several 11 different announcements within that period of months, 12 I believe we waited to complete our full nomenclature 13 changes before publishing this advisory. 14 Q Okay. And this amendment, which you state 15 became effective in October of 2013, this is the 16 first -- this amendment added an arbitration 17 provision; correct? 18 A Yes. 19 Q And this also added the jury trial waiver 20 provision; correct? 21 A Yes. 22 Q And this also added the class action waiver 23 provision; correct? 24 A Yes. 25 Q And until this change occurred in October of</p>	<p style="text-align: right;">Page 91</p> <p>1 A Yes. Thank you for reminding me. 2 Q Sure. 3 And then subsequent to that, though, the 4 arbitration provision was removed; correct? 5 A Yes. 6 Q And then it was added again in 2013; 7 correct? 8 A Correct. 9 Q But at the time that it was added in October 10 of 2013, there was no arbitration agreement in effect; 11 correct? 12 A Correct. 13 Q Okay. And I -- and there was no jury trial 14 waiver in effect; correct? 15 A Correct. 16 Q And there was no class action waiver in 17 effect; correct? 18 A Correct. 19 Q And you stated that that change became 20 effective to all distributors in October of 2013; 21 correct? 22 A Correct. 23 Q So what was the purpose of this 24 notification? 25 MR. DROOKS: Objection as to form.</p>
<p style="text-align: right;">Page 90</p> <p>1 2013, there were no such restrictions in the 2 distributor agreement at the time; correct? 3 A Can you ask one more time? 4 MR. MARK: Can you read it back? 5 (Record read.) 6 MR. CATLETT: Object to form. 7 THE WITNESS: We may have had arbitration 8 provision years before and I am not certain. I don't 9 want to -- 10 BY MR. MARK: 11 Q Well, we saw the arbitration provision, in 12 fact, in earlier -- 13 MR. DROOKS: Let the witness finish her 14 answer. 15 BY MR. MARK: 16 Q Okay. Go ahead. 17 A Before 2013, we may have had an arbitration 18 provision in our membership application. 19 Q Well -- are you done with your answer? 20 A Yes. 21 Q Okay. Now, in 2008, we saw Mr. Valdez -- we 22 saw in Mr. Valdez's agreement, which was signed in 23 2008, there was an arbitration provision; correct? 24 A Yes. 25 Q Is that what you are thinking about?</p>	<p style="text-align: right;">Page 92</p> <p>1 BY MR. MARK: 2 Q Exhibit 13? 3 A The purpose of the notification is to make 4 distributors aware that we made changes in our Book 4. 5 Q How would distributors -- is there any way 6 for distributors to know that there was a change to 7 the Rules of Conduct prior to this February 13, 2014 8 announcement? 9 A Verbal announcement to our leadership. 10 Q Other than that? 11 A No. 12 Q Does Herbalife expect the distributors to go 13 onto myherbalife.com and look at the Rules of Conduct 14 on a regular basis to see if they have been updated? 15 A Yes. 16 MR. DROOKS: Speculation. 17 BY MR. MARK: 18 Q "Yes"? 19 A Yes. 20 Q And that is without -- regardless of whether 21 or not there is a notice to do so? 22 A Well, the membership application has a 23 clause that -- that indicates members should go online 24 to stay apprised of -- of the rules, the most current 25 rules.</p>

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1 Q And how often are distributors to do that?

2 MR. DROOKS: Objection as to form. Lacks

3 foundation.

4 THE WITNESS: I suppose a time frame would

5 depend on each distributor and how they conduct their

6 business.

7 BY MR. MARK:

8 Q How -- how -- I don't understand.

9 Why would it depend on how the distributor

10 conducts its business?

11 A Some distributors maybe are online more

12 often than others.

13 Q So the obligation to go online to review the

14 Rules of Conduct depends on the distributor?

15 MR. DROOKS: Objection as to form.

16 THE WITNESS: I didn't --

17 MR. DROOKS: Lacks foundation. Legal

18 conclusion.

19 THE WITNESS: Yeah, the distributor is

20 obligated to stay apprised of the most current rules.

21 BY MR. MARK:

22 Q But how does a distributor do that?

23 MR. DROOKS: Calls for speculation.

24 THE WITNESS: They go on myherbalife.com or

25 their sponsor or through trainings that occur in the

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1 field or through our events that also include

2 training.

3 BY MR. MARK:

4 Q And that's -- is there a certain amount of

5 times that a distributor is required to do that?

6 A No.

7 MR. MARK: I will hand you a document that

8 we will mark as the next exhibit.

9 THE REPORTER: 14.

10 MR. MARK: Thank you.

11 Q Actually, I'm sorry, before we do that,

12 let's look at Exhibit 12 for a moment.

13 This is the E-mail announcement; right?

14 A Yes.

15 Q And in order to obtain the actual summary of

16 updates that is Exhibit 13, you have to click through

17 to learn more; is that right?

18 A Yes, or a distributor could just be online.

19 Obviously, they can get through it through this

20 announcement by clicking the link, but a distributor

21 could just be online and also get to this

22 announcement.

23 Q Okay. But right now, I am just talking

24 about the announcement that is Exhibit 12. Okay?

25 A Yes.

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1 Q This announcement, you receive this E-mail,

2 all you are seeing is Exhibit 12 in the E-mail;

3 correct?

4 A Correct.

5 Q Okay. And in order to see the summary of

6 updates, that is Exhibit 13, you have to click where

7 it says, "Learn more"?

8 A Correct.

9 Q Okay. Now, who is -- who is

10 salvadorrod@herbalife.com? It's at the bottom of

11 Exhibit 12.

12 A He was an employee in charge of pushing

13 these announcements out online.

14 Q Is he no longer with Herbalife?

15 A To my knowledge, he is no longer with the

16 company.

17 Q Okay. Is this E-mail announcement sent to

18 all distributors?

19 A Yes.

20 Q And how -- is there any method of confirming

21 that this was, in fact, sent to all distributors?

22 MR. CATLETT: Foundation.

23 BY MR. MARK:

24 Q If you know?

25 A Yes, I believe so.

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1 Q How is that done?

2 A The system that we use to push these

3 announcements out has reporting capabilities.

4 Q Is it like Constant Contact or something?

5 Do you know what the system is called?

6 A I believe it is called ExactTarget.

7 Q ExactTarget. Okay.

8 So that system, then, pushes out these

9 announcements and then it knows whether or not those

10 announcements bounce back or not, for example?

11 A Yes.

12 Q And I assume that a certain percentage of

13 them do, in fact, bounce back?

14 A I assume.

15 Q Yeah. Is there any method by which

16 Herbalife confirms that these announcements are, in

17 fact, sent and received by all distributors?

18 A We have the capability to do so.

19 Q Does Herbalife do so?

20 A I don't know.

21 Q Okay. And what about clicking through;

22 right, where it says, "Learn more," for example?

23 A Uh-huh.

24 Q Is there a way to tell what percentage of

25 people, for example, click through to learn more?

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<p style="text-align: right;">Page 97</p> <p>1 A I don't know.</p> <p>2 Q Is receipt of these announcements a</p> <p>3 condition to staying a distributor?</p> <p>4 MR. DROOKS: Objection as to form. Legal</p> <p>5 conclusion.</p> <p>6 THE WITNESS: No.</p> <p>7 BY MR. MARK:</p> <p>8 Q And, in fact, a distributor can unsubscribe</p> <p>9 from these announcements; right?</p> <p>10 A Yes.</p> <p>11 Q And do distributors unsubscribe from these</p> <p>12 announcements?</p> <p>13 A I don't know.</p> <p>14 Q In order to stay a distributor, do you have</p> <p>15 to stay subscribed to these announcements?</p> <p>16 A No.</p> <p>17 Q Is there anything on this notification that</p> <p>18 requires the recipient of these E-mails to acknowledge</p> <p>19 that they have received it?</p> <p>20 A No.</p> <p>21 Q And is there anything on this E-mail that</p> <p>22 allows a distributor to determine whether or not --</p> <p>23 that allows Herbalife, excuse me, to determine whether</p> <p>24 or not the E-mail went into spam or not?</p> <p>25 A Well, I don't know.</p>	<p style="text-align: right;">Page 99</p> <p>1 (Recess.)</p> <p>2 MR. MARK: I am going to hand the witness</p> <p>3 what has been marked as Exhibit 15.</p> <p>4 THE REPORTER: 14.</p> <p>5 MR. MARK: 14, I'm sorry.</p> <p>6 (Exhibit 14 marked.)</p> <p>7 BY MR. MARK:</p> <p>8 Q Can you identify this document for me?</p> <p>9 A Yes. This is Book 4, which includes the</p> <p>10 Rules of Conduct, the sales and marketing plan, sample</p> <p>11 forms, ordering procedures, enforcement procedures.</p> <p>12 Q And what is the effective date of these</p> <p>13 Rules of Conduct?</p> <p>14 A I can't tell you that by looking at this</p> <p>15 document.</p> <p>16 Q Okay. If you look at -- this document has</p> <p>17 been Bates stamped HLF, underscore, 00051 through</p> <p>18 000184.</p> <p>19 If you go to the last page, 184, you will</p> <p>20 see a -- what I think is a version number; is that</p> <p>21 right?</p> <p>22 A Correct.</p> <p>23 Q Okay. What version is this?</p> <p>24 A Version 29.</p> <p>25 Q And there is a date next to it; right?</p>
<p style="text-align: right;">Page 98</p> <p>1 Q And there is nothing in this announcement</p> <p>2 that requires the recipient to acknowledge that they</p> <p>3 agree with the new Rules of Conduct; correct?</p> <p>4 A Correct.</p> <p>5 Q Are you aware of whether any distributors</p> <p>6 actually unsubscribed from these announcements?</p> <p>7 A I don't know.</p> <p>8 Q And regardless of whether or not any</p> <p>9 distributor receives this E-mail, they are still bound</p> <p>10 by the Rules of Conduct; correct?</p> <p>11 A Correct.</p> <p>12 MR. DROOKS: Legal conclusion. Form.</p> <p>13 BY MR. MARK:</p> <p>14 Q Is it your understanding that the Rules of</p> <p>15 Conduct still apply to distributors that do not</p> <p>16 receive these announcements?</p> <p>17 A Correct.</p> <p>18 MR. MARK: Okay. I am going to hand you a</p> <p>19 document --</p> <p>20 MR. DROOKS: Etan, at some point when you</p> <p>21 are at a stopping point, I would like to take a break.</p> <p>22 MR. MARK: Sure.</p> <p>23 MR. DROOKS: Can you do it now? I don't</p> <p>24 want to interrupt, but I see you are moving on.</p> <p>25 MR. MARK: That's fine.</p>	<p style="text-align: right;">Page 100</p> <p>1 A Correct.</p> <p>2 Q That date is August, 2013?</p> <p>3 A Correct.</p> <p>4 Q Okay. So is that the date that this was</p> <p>5 published?</p> <p>6 A No.</p> <p>7 Q What is that?</p> <p>8 A That's the date that we approved all of the</p> <p>9 content in this book and sent it to our Creative</p> <p>10 Services Department for preparation of publication.</p> <p>11 Q Okay.</p> <p>12 MR. CATLETT: And just so the record is</p> <p>13 clear, then, Exhibit 14 is attached as Exhibit A to</p> <p>14 Ms. Romans' deposition?</p> <p>15 MR. MARK: Well, that is what I was going</p> <p>16 to -- that is where I am going.</p> <p>17 MR. CATLETT: Okay. I'm sorry.</p> <p>18 BY MR. MARK:</p> <p>19 Q So can you confirm for me, then, that</p> <p>20 Exhibit 14 is the same as Exhibit A to your</p> <p>21 declaration? In other words, this copy of the rules</p> <p>22 as amended in August of 2013?</p> <p>23 A Yes.</p> <p>24 MR. DROOKS: That lacks foundation. Form.</p> <p>25</p>

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<p style="text-align: right;">Page 101</p> <p>1 BY MR. MARK: 2 Q "Yes"? 3 MR. DROOKS: As amended. 4 THE WITNESS: Yes. 5 BY MR. MARK: 6 Q Okay. And this is the version of the rules 7 that we were talking about earlier that was first 8 published on October 28, 2013 on the myherbalife.com 9 website? 10 A Correct. 11 Q And -- and as of that date, this document 12 marked as Exhibit 14 was the -- this provided the 13 terms and conditions under which a distributor must 14 operate his or her Herbalife distributorship? 15 MR. DROOKS: Form. 16 THE WITNESS: Correct. 17 BY MR. MARK: 18 Q Now, if you look on page -- starting on 19 page, it looks like 93, there is some forms. I think 20 they are forms. 21 A Yes. 22 Q Okay. And earlier you recall testifying 23 that there are certain forms that get incorporated 24 into the agreements, as well? 25 A Correct.</p>	<p style="text-align: right;">Page 103</p> <p>1 out that this is just a sample form and not 2 necessarily the current version of the form that was 3 in place at that time. 4 Q Okay. But I thought you said that this form 5 is incorporated into these rules of conduct? 6 A The distributor application itself is 7 incorporated into the rules. This, though, is simply 8 a sample form. 9 Q I see. So this distributor application that 10 is on pages 94 through 97 is just a sample form? 11 A Correct. 12 Q It is not -- but it is incorporated into 13 these Rules of Conduct? 14 A The distributor application itself is 15 incorporated into the Rules of Conduct. The form that 16 is included in this book as a sample, may not 17 necessarily be the form that was in existence at the 18 time that this printed, simply because of printing 19 logistics. 20 Q Okay. Well, this says, "Revised 7/13"; 21 right, this form? 22 A I can't read the date. Sorry. I see 13, 23 but I can't see the month. 24 Q Okay. I will represent to you it says, 25 "Rev. 07/13."</p>
<p style="text-align: right;">Page 102</p> <p>1 Q And are these the forms you are talking 2 about with respect to each version of the Rules of 3 Conduct? 4 A Yes. And there could be other forms. 5 Q Okay. And I understand there could be other 6 policies, as well; correct? 7 A Yes. 8 Q That are in effect at the time? 9 A Correct. 10 Q Now, if you look at page 94, you will see 11 there is an application for International 12 distributorship. And when I say "page 94," I am 13 referring to HLF, underscore, 000094. Okay? 14 A Yes. 15 Q Is that the application of International 16 distributorship that was in effect at the time that 17 these Rules of Conduct were in effect? 18 A I am not certain. 19 Q But this form is incorporated into these 20 Rules of Conduct; correct? 21 A Correct. 22 Q And you will see that this distributorship 23 agreement on page 97 does not contain an arbitration 24 provision; correct? 25 A That's correct, but I would like to point</p>	<p style="text-align: right;">Page 104</p> <p>1 A Okay. 2 Q Okay. Does that mean that this form was 3 effective as of July, 2013? 4 A No. 5 Q Okay. What does it mean? 6 A It means that we prepared and agreed on the 7 content of this form at that time; but it still had to 8 go through our Creative Services team for artwork and 9 preparation of publication. 10 Q Okay. And do you know what form was in 11 effect as of 7/13 -- I'm sorry, as of the date of 12 these Rules of Conduct? 13 A No, I don't know. 14 Q Okay. Is whatever form that was in effect 15 as of the date of these Rules of Conduct, the form 16 that is incorporated into the terms and conditions 17 under which a distributor must operate his or her 18 Herbalife distributorship? 19 A Yes. 20 Q But you don't know whether it was this form? 21 A Correct. 22 Q This is Version 39; right? 23 A Yes. 24 Q Is Version 40 the next version of this form? 25 A To my recollection, yes.</p>

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<p>1 Q You're not aware of a 39(a) or (b); are you?</p> <p>2 A No, I'm not.</p> <p>3 MR. MARK: I will hand you a document that</p> <p>4 we will mark as Exhibit --</p> <p>5 THE REPORTER: 15.</p> <p>6 MR. MARK: -- 15.</p> <p>7 (Exhibit 15 marked.)</p> <p>8 THE WITNESS: Thank you.</p> <p>9 BY MR. MARK:</p> <p>10 Q I am handing you a document that has been</p> <p>11 Bates stamped HLF, underscore, 000802.</p> <p>12 A Yes.</p> <p>13 Q Okay. And if you look in the lower</p> <p>14 right-hand corner, you will see there is a form</p> <p>15 number.</p> <p>16 Do you see that?</p> <p>17 A Yes.</p> <p>18 Q Is this Version 40?</p> <p>19 A It looks like Version 40.</p> <p>20 Q Okay. And this was revised -- it states the</p> <p>21 revised date is 09/13; is that right?</p> <p>22 A Yes.</p> <p>23 Q So this form that has been marked as</p> <p>24 Exhibit 15 was in effect after the date -- the</p> <p>25 effective date of these Rules of Conduct; correct?</p>	<p>1 provision of these Rules of Conduct that contain an</p> <p>2 arbitration agreement; correct?</p> <p>3 MR. CATLETT: Form. Foundation.</p> <p>4 MR. DROOKS: Form.</p> <p>5 THE WITNESS: Correct.</p> <p>6 BY MR. MARK:</p> <p>7 Q Okay. So as of August of 2013, which --</p> <p>8 which one was it?</p> <p>9 Was it the arbitration provision or was it</p> <p>10 the, "any claim shall be resolved exclusively in a</p> <p>11 judicial proceeding in Los Angeles"?</p> <p>12 MR. DROOKS: Calls for a legal conclusion.</p> <p>13 THE WITNESS: I wouldn't know the answer to</p> <p>14 that question.</p> <p>15 BY MR. MARK:</p> <p>16 Q How would a distributor know the answer to</p> <p>17 that question?</p> <p>18 MR. CATLETT: Foundation.</p> <p>19 MR. DROOKS: Speculation.</p> <p>20 BY MR. MARK:</p> <p>21 Q I assume you don't know.</p> <p>22 A I don't know how to answer that.</p> <p>23 Q Your testimony earlier about this amendment</p> <p>24 to the Rules of Conduct being available online for the</p> <p>25 first time on October 28, 2013, did that also apply to</p>
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<p>1 MR. DROOKS: Lacks foundation.</p> <p>2 THE WITNESS: I believe so.</p> <p>3 BY MR. MARK:</p> <p>4 Q So at the time, looking at Exhibit 15 and</p> <p>5 the form on HLF 000097, it appears that the</p> <p>6 application in effect at the time of these Rules of</p> <p>7 Conduct was Version 39; is that correct?</p> <p>8 A It appears so.</p> <p>9 Q Okay. And you will agree with me that this</p> <p>10 form states, paragraph 17:</p> <p>11 "Any claim shall be resolved</p> <p>12 exclusively in a judicial</p> <p>13 proceeding in either the Superior</p> <p>14 Court of the Commonwealth of" -- I</p> <p>15 am looking at the Puerto Rico one.</p> <p>16 Let's look at page 00095, paragraph 17, it</p> <p>17 states:</p> <p>18 "Any claims shall be resolved</p> <p>19 exclusively in a judicial</p> <p>20 proceeding in either the Superior</p> <p>21 Court or the United States District</p> <p>22 Court, both located in Los Angeles,</p> <p>23 California." Correct?</p> <p>24 A That's what this document states.</p> <p>25 Q Okay. And that's inconsistent with the</p>	<p>1 the Spanish version of the documents or only the</p> <p>2 English version?</p> <p>3 A Can you repeat the beginning of your</p> <p>4 question?</p> <p>5 Q I'm sorry, that was not a good question.</p> <p>6 Do you recall your earlier testimony that</p> <p>7 Version 29 of the Rules of Conduct first became</p> <p>8 effective on -- when it was available to distributors</p> <p>9 online on October 28, 2013?</p> <p>10 A Yes.</p> <p>11 Q Okay. Was the Spanish version of the Rules</p> <p>12 of Conduct also available on that date?</p> <p>13 A Yes.</p> <p>14 Q Okay. Going back to Exhibit 14 for a</p> <p>15 moment.</p> <p>16 If you look on page HLF, underscore, 000121,</p> <p>17 do you remember your earlier testimony about</p> <p>18 Rule 8(c)?</p> <p>19 A Yes.</p> <p>20 Q Is this the rule you were referring to, the</p> <p>21 one that is headed, "Keep Informed of Herbalife's</p> <p>22 Policies"?</p> <p>23 A Yes.</p> <p>24 Q And now I thought you said that there were</p> <p>25 two sort of similar provisions in the Rules of</p>

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<p style="text-align: right;">Page 109</p> <p>1 Conduct, that both required distributors to stay</p> <p>2 informed of Herbalife's policy; is that --</p> <p>3 MR. DROOKS: Mischaracterizes --</p> <p>4 BY MR. MARK:</p> <p>5 Q I am not trying to mischaracterize. Is that</p> <p>6 correct?</p> <p>7 A It is not exactly what I stated.</p> <p>8 Q So tell me again, please, if you don't mind.</p> <p>9 A 8(c), yes, does include language that</p> <p>10 states, the distributor should regularly visit</p> <p>11 Herbalife's website and stay apprised of our -- of our</p> <p>12 rules, keep informed of our policies.</p> <p>13 But there is another rule that states the</p> <p>14 distributor must also abide by our rules and abide by</p> <p>15 the law.</p> <p>16 Q Okay. Where is that?</p> <p>17 A Oh, 8(d), "Comply with the Laws."</p> <p>18 Q Okay. It doesn't say anything about</p> <p>19 Herbalife's rules, though, there, does it?</p> <p>20 A This one doesn't. Perhaps, it is in another</p> <p>21 version of the rules.</p> <p>22 Q Okay.</p> <p>23 MR. MARK: I will hand you a document we</p> <p>24 will mark as Exhibit 15 and Exhibit 16.</p> <p>25 MR. DROOKS: You already marked an Exhibit</p>	<p style="text-align: right;">Page 111</p> <p>1 A A distributor that is online could find this</p> <p>2 announcement.</p> <p>3 Q How would they find it?</p> <p>4 A Under our Rules and Policies tab.</p> <p>5 Q So under Rules and Policies, it would</p> <p>6 look -- what would it look like? There would be</p> <p>7 another tab --</p> <p>8 A There would be another tab for Advisories</p> <p>9 and Announcements.</p> <p>10 Q Advisories and Announcements. Okay. So</p> <p>11 then this advisory or announcement would be up there</p> <p>12 at the time?</p> <p>13 A Yes.</p> <p>14 Q How long does that advisory or announcement</p> <p>15 stay on the myherbalife.com website?</p> <p>16 A Indefinitely.</p> <p>17 Q Is it still -- it is still there right now?</p> <p>18 A Which one is this, Version 31. To my</p> <p>19 knowledge, this one is no longer there.</p> <p>20 Q Okay. So how long do these announcements</p> <p>21 stay on online?</p> <p>22 A In the past, they used to stay on an</p> <p>23 extended period of time.</p> <p>24 Q Do you know how long this Exhibit 17 stayed?</p> <p>25 A No.</p>
<p style="text-align: right;">Page 110</p> <p>1 15.</p> <p>2 MR. MARK: I did?</p> <p>3 THE WITNESS: You said 16 after.</p> <p>4 MR. MARK: I'm sorry, Exhibit 16 and 17.</p> <p>5 (Exhibits 16 and 17 marked.)</p> <p>6 BY MR. MARK:</p> <p>7 Q So I am handing you what has been marked as</p> <p>8 Exhibits 15 and 16.</p> <p>9 Can you identify these documents?</p> <p>10 A Exhibit 16 is the --</p> <p>11 Q Did I say 15 and 16 again? 16 and 17. I'm</p> <p>12 sorry.</p> <p>13 A So Exhibit 16 is the online announcement</p> <p>14 where the reader can click, "Learn more," and get to</p> <p>15 the actual announcement about the Rules of Conduct.</p> <p>16 Q And Exhibit 17 is the actual announcement?</p> <p>17 A Correct.</p> <p>18 Q And this announcement was sent on July 21st,</p> <p>19 2014?</p> <p>20 A Correct.</p> <p>21 Q The only way to see the document marked as</p> <p>22 Exhibit 17 would be to click on "Learn more";</p> <p>23 correct?</p> <p>24 A No.</p> <p>25 Q Okay. How else would you see Exhibit 17?</p>	<p style="text-align: right;">Page 112</p> <p>1 Q Okay. And part -- it is your understanding</p> <p>2 that part of a distributor's obligation is to stay</p> <p>3 apprised of the rules is to routinely check the</p> <p>4 Announcements tab on myherbalife.com?</p> <p>5 A The Announcements tab, yes, and also the</p> <p>6 book. The actual book.</p> <p>7 Q Regardless of whether or not there is</p> <p>8 actually -- they receive notice of a published</p> <p>9 announcement?</p> <p>10 A Correct.</p> <p>11 Q And is this announcement sent via the same</p> <p>12 system that you talked about earlier?</p> <p>13 A Yes.</p> <p>14 Q What was it called again?</p> <p>15 A ExactTarget.</p> <p>16 Q Exact, E-X-A-C-T --</p> <p>17 A Target.</p> <p>18 Q -- Target.</p> <p>19 And there is no -- and you don't know</p> <p>20 whether or not this announcement reached each</p> <p>21 distributor; correct?</p> <p>22 A No, I don't know.</p> <p>23 Q Do you know whether it reached the --</p> <p>24 specifically the plaintiffs in this case?</p> <p>25 A I wouldn't know.</p>

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<p style="text-align: right;">Page 113</p> <p>1 Q Did you check to see if any of the</p> <p>2 plaintiffs in this case received the announcement that</p> <p>3 was marked as Exhibit 16?</p> <p>4 A No.</p> <p>5 Q Did you check to see if any of the</p> <p>6 plaintiffs in this case received the announcement that</p> <p>7 was marked as Exhibit 12?</p> <p>8 A I may have.</p> <p>9 Q And what did you see?</p> <p>10 A I don't recall.</p> <p>11 Q All right. How did you check to see if the</p> <p>12 plaintiffs in this case received the announcement</p> <p>13 marked as Exhibit 12?</p> <p>14 MR. DROOKS: Lacks foundation.</p> <p>15 THE WITNESS: Through the department that</p> <p>16 pushes the ExactTarget communications.</p> <p>17 BY MR. MARK:</p> <p>18 Q Can you describe for me, please, that</p> <p>19 conversation?</p> <p>20 A That was done through E-mail.</p> <p>21 Q Okay. So you E-mailed -- do you actually</p> <p>22 recall E-mailing the department that deals with</p> <p>23 pushing these announcements through as to whether or</p> <p>24 not the plaintiffs in this case actually received the</p> <p>25 document that has been previously marked as</p>	<p style="text-align: right;">Page 115</p> <p>1 A I don't recall.</p> <p>2 Q Okay. So you recall asking a team member,</p> <p>3 the team member responded to you, but you don't recall</p> <p>4 what the response was?</p> <p>5 A Exactly.</p> <p>6 Q Why did you ask your team member whether or</p> <p>7 not any of the plaintiffs in this case received the</p> <p>8 notification?</p> <p>9 A I believe our lawyer asked me the question.</p> <p>10 Q But it is your -- but it is your</p> <p>11 understanding that those -- that all the plaintiffs</p> <p>12 are bound by these rules regardless of whether or not</p> <p>13 they received notification; right?</p> <p>14 A Yes.</p> <p>15 Q And there is certainly no obligation for</p> <p>16 them to affirm that they have accepted any of these</p> <p>17 obligations; correct?</p> <p>18 MR. DROOKS: Objection as to form. Legal</p> <p>19 conclusion.</p> <p>20 THE WITNESS: They affirm when they sign</p> <p>21 their distributor application that they will.</p> <p>22 BY MR. MARK:</p> <p>23 Q Right. But I am talking about the</p> <p>24 amendments. I am talking about receiving the</p> <p>25 amendments.</p>
<p style="text-align: right;">Page 114</p> <p>1 Exhibit 12?</p> <p>2 A I may have E-mailed one of my team members</p> <p>3 to obtain the information.</p> <p>4 Q Okay. Did your team member respond to your</p> <p>5 E-mail?</p> <p>6 MR. DROOKS: Objection as to form. Lacks</p> <p>7 foundation.</p> <p>8 THE WITNESS: I believe so.</p> <p>9 BY MR. MARK:</p> <p>10 Q Okay. And what did your team member tell</p> <p>11 you?</p> <p>12 A I don't recall.</p> <p>13 Q You don't recall whether your team member</p> <p>14 said that any of the plaintiffs did or did not receive</p> <p>15 the notification marked as Exhibit 12?</p> <p>16 A Correct, I don't recall.</p> <p>17 Q But the purpose of reaching out to this team</p> <p>18 member was to determine whether any of plaintiffs did,</p> <p>19 in fact, receive the document marked as Exhibit 12?</p> <p>20 A Correct.</p> <p>21 Q Okay. Did you make any efforts to see if</p> <p>22 the plaintiffs received the document marked as</p> <p>23 Exhibit 16?</p> <p>24 A I believe I did.</p> <p>25 Q Okay. And same sets -- same questions --</p>	<p style="text-align: right;">Page 116</p> <p>1 There is no obligation that any distributor</p> <p>2 affirmed that they agreed to the amendments; correct?</p> <p>3 A Correct.</p> <p>4 MR. DROOKS: Objection as to form.</p> <p>5 BY MR. MARK:</p> <p>6 Q Do you know why Rule 8(c) was removed from</p> <p>7 the rules?</p> <p>8 MR. DROOKS: Calls for speculation.</p> <p>9 THE WITNESS: No, I don't know.</p> <p>10 BY MR. MARK:</p> <p>11 Q I think I asked this, but I want to confirm.</p> <p>12 There were Rules of Conduct in effect prior</p> <p>13 to the Rules of Conduct dated August, 2013; right?</p> <p>14 A Correct.</p> <p>15 Q And you saw the applications that you have</p> <p>16 attached to your declaration, including some in 2008,</p> <p>17 there were Rules of Conduct in effect at the time;</p> <p>18 correct?</p> <p>19 A Correct.</p> <p>20 MR. MARK: I will hand you a document that</p> <p>21 we will mark as Exhibit 18.</p> <p>22 (Exhibit 18 marked.)</p> <p>23 THE WITNESS: Thank you.</p> <p>24 BY MR. MARK:</p> <p>25 Q Can you identify this document for me,</p>

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1 please?

2 A Yes, this is Book 4, Version 31, which

3 includes the Rules of Conduct, sample forms, ordering

4 procedures.

5 Q What was the date that these Rules of

6 Conduct governed the distributors?

7 A They became available July 21st, 2014.

8 Q Is that the date at which distributors

9 became bound by these Rules of Conduct?

10 MR. CATLETT: Foundation.

11 MR. DROOKS: Form.

12 THE WITNESS: It is my understanding.

13 BY MR. MARK:

14 Q And how is that your understanding?

15 A That is when we published these rules.

16 Q So if you look at paragraph 9 of your

17 declaration, you write:

18 "On July 21st, Herbalife sent a

19 notification to all distributors of

20 the recent changes of the rules,

21 including the changes to the

22 arbitration provision." Correct?

23 A My paragraph 9 doesn't -- oh, yes, it does.

24 Yes.

25 Q Okay. And that is the notification we just

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1 looked at; right?

2 A Yes.

3 Q Now, are you aware of whether these rules

4 were published on herbalife.com before July 21st,

5 2014?

6 A It's my recollection that they were

7 published online on July 21st, 2014.

8 Q Simultaneous with this notification?

9 A I believe so.

10 Q Now, Rule 8(c) is not contained in this

11 version of the rules; correct?

12 A We changed our numbering. So I am

13 verifying.

14 Q Sure.

15 A So we have, in this version, Rule 3.1.1

16 entitled Must Comply with the Rules and the Law, which

17 is on page 84, our page 84.

18 Q Page 84, okay. 3.1.1.

19 A "Must Comply with the Rules

20 and the Law. Members must comply

21 with the laws and the rules in each

22 country where they are conducting

23 their Herbalife business. Members

24 are to review these rules with

25 downline members."

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1 Q Okay. Is that the replacement of Rule 8(c)?

2 A I believe so.

3 Q And you will agree with me that as of

4 July 21st, 2014, Rule 8(c), in its form, Rule 8(c) is

5 no longer in effect; correct?

6 A I can't agree to that on the spot because we

7 may have similar language in other documents.

8 Q Okay. But Rule 8(c) -- and that is why I am

9 talking specifically about Rule 8(c).

10 Rule 8(c), as Rule 8(c), is no longer

11 applicable; correct?

12 A Correct.

13 Q Okay. So as of July 21st, 2014, Rule 8(c)

14 is no longer in effect?

15 A That specific rule is no longer published.

16 Q So it is no longer in effect; correct?

17 MR. CATLETT: Foundation.

18 MR. DROOKS: Form.

19 THE WITNESS: I would not say that it is no

20 longer in effect.

21 BY MR. MARK:

22 Q So Rule 8(c) is still in effect as of

23 July 21st, 2014?

24 MR. CATLETT: Same objections.

25 MR. DROOKS: Form.

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1 THE WITNESS: The parameter that is set for

2 distributors in Rule 8(c) is still in effect.

3 BY MR. MARK:

4 Q Okay. And is that because a similar

5 parameter exists in this version of 31?

6 A It may be in this version or it may be on

7 the application. So I can't remember sitting here in

8 front of you.

9 Q Okay.

10 A So I don't want to say no.

11 Q Okay. And that is why -- what I understand

12 your testimony that there may be some other language

13 in some other application or somewhere else as of

14 July 21st, 2014, that contains some of the same

15 obligations as what Rule 8(c) contained?

16 A That's correct.

17 Q Okay. But you will agree with me that

18 Rule 8(c) is no longer in existence for purposes of

19 obligations of distributors as of July 21st, 2014?

20 MR. CATLETT: Form.

21 THE WITNESS: No, I don't agree with that

22 statement.

23 BY MR. MARK:

24 Q So Rule 8(c) still is in existence as of

25 July 21st, 2014 and distributors are still bound by

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1 it?

2 A The requirements in Rule 8(c) are still in

3 existence and distributors are still bound by it.

4 Q Okay. Show me, please, where the

5 requirements of Rule 8(c), and specifically, the

6 obligation to stay informed of the rules is contained

7 in the Rules of Conduct marked as Exhibit 19.

8 A 18.

9 Q 18.

10 A My interpretation of Rule 3.1.1 states that:

11 "Members must comply with the laws

12 and the Rules and that members are

13 to review these Rules with downline

14 members."

15 And these are the most current rules.

16 Q So the word "rules" is capitalized; right,

17 in 3.1.1?

18 A Yes.

19 Q Does "rules" mean the Rules of Conduct?

20 A My understanding is all policies, whether it

21 be on the membership application, Book 4, the forms,

22 the advisories.

23 Q Is the word "rules" defined in this

24 document?

25 A I don't know.

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1 "The Herbalife Rules of Conduct and

2 all other rules and policies and

3 advisories that Herbalife issues or

4 in the future may issue from time

5 to time."

6 Q What page are you on?

7 A On page 111.

8 Q Under Definitions?

9 A Yes.

10 Q Is there any part of this exhibit that

11 requires distributors to stay informed of the rules?

12 A Again, my interpretation of 3.1.1 indicates

13 they have to stay informed because they must comply

14 with the laws and the rules.

15 Q Okay. So it says that they have to comply

16 with the rules, and you interpret that as meaning that

17 they also have to stay informed of the rules?

18 A Correct.

19 Q Is there anything else in this document, to

20 your knowledge, that obligates the distributors to

21 stay informed of changes in the rules?

22 A I believe that there are references in some

23 of the rules.

24 Q But you don't -- it is not your position

25 that Rule 8(c) specifically carries forward to the

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1 later revisions of the rule; is it?

2 MR. DROOKS: You can't ask her what our

3 position is. You can ask her understanding.

4 BY MR. MARK:

5 Q Understanding. It is not your understanding

6 that Rule 8(c) carries forward in its form to future

7 versions of the rules; is it?

8 MR. CATLETT: Form.

9 THE WITNESS: I think I have already

10 answered that question. Rule 8(c), the specific

11 language in Rule 8(c), does not appear in this

12 Version 31, but my understanding of Rule 3.1.1 covers

13 what was in Rule 8(c).

14 BY MR. MARK:

15 Q Okay. But that Version 31 replaces earlier

16 versions of the Rules of Conduct; correct?

17 A That's correct.

18 Q Okay. You're familiar with the Herbalife --

19 the home page of myherbalife.com; right?

20 A Yes.

21 MR. MARK: I will hand you a document that

22 we will mark as --

23 THE REPORTER: 19.

24 MR. MARK: -- 19.

25 (Exhibit 19 marked.)

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1 THE WITNESS: Thank you.

2 BY MR. MARK:

3 Q Is this the myherbalife.com home page?

4 Admittedly, it is a printout of it.

5 A It looks like it.

6 Q Okay. And do you remember your earlier

7 testimony about the policies that are incorporated

8 into the distributor agreement?

9 A Yes.

10 Q Those are available on myherbalife.com;

11 correct?

12 A Correct.

13 Q And do those include the Privacy Policy?

14 A Yes.

15 Q Does it include the terms of use?

16 A The terms of use, sorry, I am not clear what

17 you're asking me.

18 Q Sure.

19 You talked earlier about the incorporation

20 of the various documents into the application; --

21 A Yes.

22 Q -- right?

23 And you said that those were available on

24 myherbalife.com; right?

25 A Yes.

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<p style="text-align: right;">Page 125</p> <p>1 Q Okay. And the Privacy Policy is one of 2 those written policies that are incorporated in here; 3 right? 4 A Yes. 5 Q Okay. And the Terms of Use, do you see the 6 Terms of Use? 7 MR. DROOKS: Of the website? 8 MR. MARK: Of the website. 9 THE WITNESS: Oh, I see here, Terms of Use. 10 BY MR. MARK: 11 Q Yes. Is that also something that was 12 incorporated into the application? The Privacy Policy 13 is; correct? 14 A Um-hmm. 15 Q "Yes"? Is the Terms of Use also? 16 MR. CATLETT: Form. Foundation. 17 MR. DROOKS: Form. Legal conclusion. 18 THE WITNESS: It would -- 19 BY MR. MARK: 20 Q Is that one of the written Herbalife 21 policies that provide the terms and conditions under 22 which a distributor must operate his or her 23 distributorship? 24 A It would be my understanding that it is. 25 Q Yeah. And is the Privacy Policy one of the</p>	<p style="text-align: right;">Page 127</p> <p>1 A No. 2 Q You have never seen it? 3 A No, I haven't. 4 Q Okay. Are you aware that these are the 5 Terms of Use that are on the myherbalife.com website? 6 A No, I am not aware of this. 7 Q Okay. Do you see the last revised date, 8 February 2nd, 2017? 9 A No, I see January -- oh, I see after that. 10 Q The last revised date on the first page? 11 A Oh, yes, February 2nd, 2017. 12 Q Who is responsible at Herbalife for revising 13 the Terms of Use -- 14 MR. DROOKS: Maybe you want to let her 15 finish her answer. 16 MR. MARK: I thought she did. 17 Q Who is responsible at Herbalife for revising 18 the Terms of Use, if you know? 19 A I don't know. 20 Q Okay. And these Terms of Use, if you look 21 at the first paragraph, it states: 22 "Please read these Terms of Use and 23 the Privacy Policy" -- and then it 24 links to the Privacy Policy -- 25 "before using this website or</p>
<p style="text-align: right;">Page 126</p> <p>1 terms and conditions under which a distributor must 2 operate his or her Herbalife distributorship? 3 MR. CATLETT: Form and foundation. 4 THE WITNESS: I am pausing a moment because 5 I don't know if this Privacy Policy is in reference to 6 the website or if this Privacy Policy is the Privacy 7 Policy that we have in place as part of our rules for 8 our members. 9 BY MR. MARK: 10 Q Okay. 11 A I don't know what is behind this. 12 Q So does that matter, then, which one of 13 those two are in -- 14 A My understanding would be that it is 15 incorporated. 16 Q Okay. Right. That both the Privacy Policy 17 and the Terms of Use are incorporated? 18 MR. CATLETT: Form and foundation. 19 THE WITNESS: Yes. 20 MR. MARK: I will hand you a document that 21 we will mark as Exhibit 20. 22 (Exhibit 20 marked.) 23 THE WITNESS: Thank you. 24 BY MR. MARK: 25 Q Have you seen this document before?</p>	<p style="text-align: right;">Page 128</p> <p>1 purchasing any product or services 2 from Herbalife." 3 Do you see that? 4 A Yes. 5 Q Did I read that correctly? 6 A Yes. 7 Q Okay. Are you aware that Herbalife requires 8 its distributors to read these Terms of Use before 9 using this website or purchasing any product or 10 services from Herbalife? 11 A No. 12 MR. DROOKS: Mischaracterizes the document. 13 THE WITNESS: I wasn't aware. 14 BY MR. MARK: 15 Q Okay. Let's look at the third paragraph. 16 Do you see the bold language there, "If you 17 do not agree"? 18 Do you see that? 19 A Yes. 20 Q Can you read that, please? 21 A "If you do not agree to be 22 bound by this agreement, do not 23 access or otherwise use this site 24 or participate in any of the 25 offerings."</p>

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1 Q So these Terms of Use govern the use of the
2 website; correct?
3 MR. DROOKS: Form. Legal conclusion.
4 MR. CATLETT: Foundation.
5 MR. DROOKS: Foundation.
6 THE WITNESS: What was your question?
7 BY MR. MARK:
8 Q These Terms of Use govern the use of
9 myherbalife.com website; right?
10 MR. DROOKS: Same objections.
11 THE WITNESS: It appears to.
12 BY MR. MARK:
13 Q Okay. And you are the senior director of
14 Member Policy Administration; right?
15 A Correct.
16 Q And you were not aware of this policy?
17 A I have never seen this document with the
18 question you had asked me.
19 Q But it is all on the Herbalife --
20 myherbalife.com website?
21 A Yes.
22 Q Okay. Do you see the fourth paragraph that
23 begins with, "This agreement"?
24 A Yes.
25 Q It states that:

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1 "It constitutes the entire
2 agreement between you and us
3 pertaining to the subject matter
4 hereof and supersede all prior or
5 other arrangements, understandings,
6 negotiations and discussions,
7 whether oral or written."
8 Do you see that?
9 A Yes.
10 Q Are you aware of any language in any of the
11 Rules of Conduct that states that it supersedes all
12 prior versions of the Rules of Conduct or any other
13 agreement between the distributor and Herbalife?
14 MR. CATLETT: Form and foundation.
15 THE WITNESS: I don't recall.
16 BY MR. MARK:
17 Q As you sit here today, as the senior
18 director of Member Policy Administration, are you
19 aware of any language in any of the Rules of Conduct
20 that state that a particular Rule of Conduct
21 supersedes any other agreements between the
22 distributor and Herbalife?
23 MR. CATLETT: Form.
24 THE WITNESS: I am familiar with that
25 language, but I am having difficulty in recalling

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1 where -- where that would be positioned.
2 BY MR. MARK:
3 Q So you think you have seen it, but you're
4 not sure where?
5 A Correct.
6 Q Is it possible that it was the Terms of Use
7 that you saw it?
8 A I don't believe that is where I saw it.
9 MR. DROOKS: Speculation.
10 BY MR. MARK:
11 Q If you look at the second paragraph of the
12 Terms of Use, you will see where it says -- this
13 sentence begins with, "This agreement"?
14 A Second paragraph?
15 Q Yes. I'm sorry.
16 The second sentence of the second paragraph
17 that begins with, "This agreement."
18 Do you see that?
19 A Yes.
20 Q Can you read that sentence for me, please,
21 out loud?
22 A Second paragraph, second sentence, okay, I
23 see it.
24 "This agreement sets forth the
25 legal terms and conditions

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1 governing your use of this website
2 and each independent distributor's
3 platform and each web property
4 collectively referred to herein as
5 the Site, and for your purchase
6 and/or use of any Herbalife goods,
7 services, collectively referred to
8 hereinafter as Offerings. This
9 agreement also provides information
10 on how to become an Herbalife
11 independent distributor or
12 Herbalife preferred member."
13 Q Okay. So you would agree with me that these
14 Terms of Use govern the use of the website; correct?
15 MR. DROOKS: Objection as to form.
16 THE WITNESS: It appears so.
17 BY MR. MARK:
18 Q And you would also agree with me that these
19 Terms of Use govern each independent distributor's
20 platform and each web property?
21 MR. DROOKS: Objection as to form.
22 Mischaracterizes the document.
23 BY MR. MARK:
24 Q Correct?
25 MR. CATLETT: And foundation.

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<p>1 THE WITNESS: I believe so.</p> <p>2 BY MR. MARK:</p> <p>3 Q And you would agree with me that this</p> <p>4 agreement also governs a distributor's purchase and/or</p> <p>5 use of any Herbalife goods or services?</p> <p>6 MR. DROOKS: Mischaracterizes the document.</p> <p>7 MR. CATLETT: Foundation.</p> <p>8 BY MR. MARK:</p> <p>9 Q Correct?</p> <p>10 MR. DROOKS: Objection as to form.</p> <p>11 THE WITNESS: It is one document that</p> <p>12 includes policies, but not the only.</p> <p>13 BY MR. MARK:</p> <p>14 Q Well, this supersedes other documents,</p> <p>15 though; right?</p> <p>16 MR. DROOKS: Objection as to form.</p> <p>17 BY MR. MARK:</p> <p>18 Q You can answer.</p> <p>19 MR. DROOKS: Calls for a legal conclusion.</p> <p>20 MR. CATLETT: Form.</p> <p>21 THE WITNESS: I wouldn't know how to define</p> <p>22 that.</p> <p>23 BY MR. MARK:</p> <p>24 Q Well, it states that. But all right. It</p> <p>25 states that it supersedes other agreements; correct?</p>	<p>1 answered --</p> <p>2 BY MR. MARK:</p> <p>3 Q You are the --</p> <p>4 MR. DROOKS: -- now for the fifth time.</p> <p>5 BY MR. MARK:</p> <p>6 Q You are the senior director of Member Policy</p> <p>7 Administration; right?</p> <p>8 A Yes, that's correct.</p> <p>9 MR. DROOKS: Asked and answered.</p> <p>10 BY MR. MARK:</p> <p>11 Q And as part of your responsibilities, you</p> <p>12 are required to stay apprised of Herbalife's policies;</p> <p>13 correct?</p> <p>14 A Yes, I am.</p> <p>15 Q And this is an Herbalife policy; correct?</p> <p>16 MR. CATLETT: Foundation.</p> <p>17 THE WITNESS: Yes.</p> <p>18 BY MR. MARK:</p> <p>19 Q Okay. So that is why I am asking you this</p> <p>20 question because I don't know who else to ask.</p> <p>21 MR. DROOKS: That's argumentative.</p> <p>22 BY MR. MARK:</p> <p>23 Q Okay. So would you agree that --</p> <p>24 MR. DROOKS: That's not a question,</p> <p>25 actually. Let's stick with the questions. Don't</p>
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<p>1 MR. DROOKS: Mischaracterizes the document.</p> <p>2 BY MR. MARK:</p> <p>3 Q You can answer.</p> <p>4 MR. DROOKS: Object as to form.</p> <p>5 THE WITNESS: I believe we read the word</p> <p>6 "supersedes."</p> <p>7 BY MR. MARK:</p> <p>8 Q Do you want me to show --</p> <p>9 A Yeah, show me.</p> <p>10 Q Okay. Sure. It is it one, two, three,</p> <p>11 fourth paragraph.</p> <p>12 A Yes, it indicates supersedes.</p> <p>13 Q Okay. So would you agree with me that this</p> <p>14 document supersedes all prior other arrangements,</p> <p>15 understandings, negotiations and discussions between</p> <p>16 distributor and Herbalife?</p> <p>17 MR. CATLETT: Foundation.</p> <p>18 MR. DROOKS: Objection as to form.</p> <p>19 Mischaracterizes the document.</p> <p>20 THE WITNESS: I don't feel like I am in a</p> <p>21 position to answer that question because I am not a</p> <p>22 lawyer.</p> <p>23 BY MR. MARK:</p> <p>24 Q Okay. But are you the head of --</p> <p>25 MR. DROOKS: That has been asked and</p>	<p>1 argue with the witness.</p> <p>2 BY MR. MARK:</p> <p>3 Q So you would agree with me, then, that this</p> <p>4 agreement appears to supersede all other agreements</p> <p>5 between Herbalife and the distributor; correct?</p> <p>6 MR. DROOKS: Object as to form.</p> <p>7 Mischaracterizes the document.</p> <p>8 THE WITNESS: I did not say that.</p> <p>9 BY MR. MARK:</p> <p>10 Q You don't agree with that statement?</p> <p>11 MR. CATLETT: Foundation.</p> <p>12 MR. DROOKS: Lacks foundation. Form. Legal</p> <p>13 conclusion.</p> <p>14 THE WITNESS: I am not in a capacity to make</p> <p>15 that determination.</p> <p>16 BY MR. MARK:</p> <p>17 Q Okay. Who would be at Herbalife?</p> <p>18 A I assume a lawyer.</p> <p>19 Q Okay. You see the reference to Herbalife</p> <p>20 goods or services -- goods, services in the second</p> <p>21 paragraph?</p> <p>22 A Yes, I do.</p> <p>23 Q What are Herbalife's goods?</p> <p>24 MR. CATLETT: Foundation.</p> <p>25</p>

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1 BY MR. MARK:
2 Q If you know?
3 MR. DROOKS: Foundation.
4 THE WITNESS: Nutritional products.
5 BY MR. MARK:
6 Q What about Herbalife services?
7 MR. CATLETT: Same objection.
8 THE WITNESS: My understanding of services
9 would be some of the services that we offer our
10 distributors, like use of our website.
11 BY MR. MARK:
12 Q What about events?
13 MR. CATLETT: Same objection.
14 THE WITNESS: I don't know that an event is
15 considered a service.
16 BY MR. MARK:
17 Q Can you purchase tickets for events on the
18 Herbalife website?
19 A I don't know.
20 Q You don't know whether you can buy tickets
21 to Extravaganza on myherbalife.com?
22 A I don't know that.
23 Q Going to paragraph 20, the last page of the
24 document, do you see where it says, "Choice of law and
25 venue"?

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1 A Yes.
2 Q That is not an arbitration provision; is it,
3 to your knowledge?
4 MR. DROOKS: Objection as to form. Legal
5 conclusion.
6 MR. CATLETT: Foundation.
7 BY MR. MARK:
8 Q Well, you know what an "arbitration
9 provision" is; right?
10 A To my knowledge, this is not an arbitration
11 provision.
12 Q Do you know what an "arbitration provision"
13 is?
14 A I have a general understanding.
15 Q Well, you stated in your declaration that
16 all Herbalife members are subject to an arbitration
17 provision; correct?
18 A Correct.
19 Q Okay. So I am asking you whether
20 paragraph 20 is an arbitration provision, to your
21 knowledge?
22 A To my knowledge, it's not.
23 Q Okay. Is paragraph 20, to your knowledge,
24 inconsistent with an arbitration provision?
25 MR. DROOKS: Objection as to form. Legal

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1 conclusion.
2 BY MR. MARK:
3 Q You can answer.
4 A It is different than an arbitration
5 provision.
6 Q In other words, you can't have both; right?
7 It is one or the other?
8 MR. DROOKS: Objection as to form. Legal
9 conclusion.
10 BY MR. MARK:
11 Q If you know?
12 A I don't know.
13 MR. MARK: Okay. I am going to hand you a
14 document that we will mark as Exhibit 21.
15 (Exhibit 21 marked.)
16 THE WITNESS: Thank you.
17 BY MR. MARK:
18 Q Have you seen this document before?
19 A Yes, I have.
20 Q Okay. Can you identify it for me, please?
21 A It says, "Version 33 of Book 4." The date
22 on the spine is November, '16.
23 Q November, 2016, is that 2016?
24 A It is 2016.
25 Q Okay. Is it your understanding that this is

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1 the version of the Rules of Conduct that is currently
2 in effect?
3 A I don't believe so.
4 Q There is a later version?
5 A Yes.
6 Q If you go to page HLF, underscore, 000666
7 for a moment.
8 A Yes.
9 Q Do you see that Footnote 1?
10 A Yes.
11 Q Do you understand what that footnote means?
12 MR. DROOKS: Calls for speculation.
13 THE WITNESS: So it states:
14 "Herbalife has the sole and
15 absolute discretion to change the
16 Rules of Conduct and issue other
17 rules, policies and advisories from
18 time to time altogether the rules.
19 However, the changes in new rules
20 will be prospective, which means
21 they will not be applied to past
22 behavior. Herbalife may impose any
23 corrective action or sanction to
24 address any breach of the rules and
25 we reserve the right to waive fully

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<p style="text-align: right;">Page 141</p> <p>1 or partially any breach of any 2 rule." 3 BY MR. MARK: 4 Q Okay. And this is the document that was 5 marked -- and just to make sure we are all on the same 6 page. 7 This document, which was Bates stamped HLF, 8 underscore, 582 through 749 is the document that is 9 referred to as Exhibit G of your declaration, 10 paragraph 11; is that correct? 11 A Yes. 12 Q Okay. 13 So the sentence that says, 14 "However, the changes in new rules 15 will be prospective, which means 16 they will not be applied to past 17 behavior," what does that mean? 18 MR. DROOKS: Calls for speculation. Lacks 19 foundation. Legal conclusion. 20 BY MR. MARK: 21 Q Do you know what that means? 22 MR. DROOKS: Speculative. Form. 23 THE WITNESS: My understanding is that if 24 someone's behavior did X prior to a rule coming out, 25 we are not going to go back in time and say, you know,</p>	<p style="text-align: right;">Page 143</p> <p>1 arbitration provision, you're not sure whether or not 2 that would fall into -- whether or not the arbitration 3 provision would apply to that conduct? 4 MR. DROOKS: Vague and ambiguous. Objection 5 as to form. 6 BY MR. MARK: 7 Q Do you understand? 8 A I understand, but I don't know how to answer 9 your question correctly -- or to answer your question. 10 Q I don't know what the correct answer -- 11 A I don't mean correctly. I just mean I do 12 not know how to answer the question. 13 Q Okay. I just want to make sure it is not 14 because you don't understand the question; it is just 15 that you are not sure of what the answer is? 16 A I understand your question, but because I am 17 not a person with legal background, I don't have the 18 capacity to interpret when arbitration that you're 19 asking me about went into effect or what it covered 20 people before or after. 21 Q Okay. Well, you do state that the 22 arbitration provision was added in August, 2013 in 23 your declaration; right? 24 A Correct. 25 Q Okay. So let's talk about conduct in July</p>
<p style="text-align: right;">Page 142</p> <p>1 in whatever month, you did X; and now we have this 2 rule in place; and we are going to -- so you are in 3 trouble for what you did in the past before the rule 4 was published. 5 BY MR. MARK: 6 Q Okay. So -- okay. So if a rule -- so if -- 7 I am trying to think if there is a way I can rephrase 8 it because I still don't completely understand. 9 If a new rule is added in 20 -- in, let's 10 say, this Version 33, and that rule makes conduct that 11 predated this amendment a violation of the rules, 12 Herbalife is not going to go back and say, hey, you 13 violated these rules before this amendment, now this 14 amendment is in effect; and I am imposing these rules 15 to your earlier behavior? 16 A Exactly. 17 MR. DROOKS: Objection as to form. 18 BY MR. MARK: 19 Q Is it your understanding that that would 20 apply also to the arbitration provision? And do you 21 understand what I mean by that? 22 A I understand your question, but I can't 23 answer that. Again, I am not a lawyer. I don't know 24 how to interpret that specific. 25 Q So whether or not conduct that predated the</p>	<p style="text-align: right;">Page 144</p> <p>1 of 2013. There is no arbitration provision in effect 2 then; right? 3 MR. DROOKS: Vague and ambiguous as to 4 "conduct." 5 BY MR. MARK: 6 Q Okay. Right? 7 A Again, I don't know how to answer that. 8 Q Well -- 9 A We read on the application the clause that 10 spoke about policies being in their then current form. 11 Q Okay. 12 A So I would leave that up to an attorney to 13 define exactly the answer to your question. 14 Q As to whether or not conduct before the 15 arbitration provision would or would not be subject to 16 arbitration? 17 MR. DROOKS: Objection as to form. 18 BY MR. MARK: 19 Q Is that the question that you are -- 20 MR. DROOKS: Objection as to form. 21 MR. MARK: Can I finish the question before 22 you object? 23 MR. DROOKS: Your question was complete. If 24 you go on, it is just compound. 25 MR. MARK: It was not complete.</p>

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1 MR. DROOKS: Okay.
2 MR. MARK: You objected to form and then I
3 started another question, and then you objected to
4 form when I was four words into that question.
5 MR. DROOKS: I see. So you are withdrawing
6 the prior question?
7 MR. MARK: Yes, I am withdrawing the prior
8 question.
9 MR. DROOKS: Okay.
10 BY MR. MARK:
11 Q So is it your -- so what you are stating --
12 I just want to make sure I understand -- is that an
13 arbitration provision that was first added in August,
14 2013, you're not sure whether or not that would apply
15 to conduct before August of 2013?
16 MR. DROOKS: Objection. Vague and ambiguous
17 as to "conduct." Objection as to form.
18 THE WITNESS: My personal understanding is
19 that it would apply based on the sentence that we
20 spoke about on the member application, which says that
21 the distributor is bound by the policy -- the most
22 current policies in their then form.
23 BY MR. MARK:
24 Q Which is the same, you testified to, as the
25 most recently published form?

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1 A Yes.
2 Q Okay. So it is your understanding, then,
3 that conduct that occurred before the arbitration
4 provision went into effect in August, 2013 would be
5 subject to the arbitration provision because of that
6 provision which applies on a prospective basis?
7 A That is my personal understanding.
8 Q If you turn to page 644 of Exhibit 21.
9 A Yes.
10 Q There is the sample form Herbalife
11 Membership Application and Agreement, Version 46,
12 revised April, 2016; is that correct?
13 A I can't see the date.
14 Q Okay.
15 A Yes.
16 Q Other than the date part, is what I said
17 correct?
18 A Yes.
19 Q I will represent to you it says,
20 "Version 46, revised April 2016"; okay?
21 A Yes.
22 Q All right. So -- but you don't know whether
23 this form application was in effect at the time that
24 these rules were put into effect; correct?
25 A That's true.

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1 Q And that is because of the Creative
2 Department?
3 A The logistics of printing.
4 Q Print; right.
5 Now, is the -- are the provisions of this
6 Membership Application and Agreement sample form
7 also -- do those also govern the Herbalife distributor
8 relationship as of the time that these rules are put
9 into effect?
10 MR. DROOKS: Objection as to form. Legal
11 conclusion.
12 THE WITNESS: That is a very technical
13 question.
14 BY MR. MARK:
15 Q Well, a distributor gets this packet, these
16 Rules of Conduct; right, when they sign the
17 application; correct?
18 A Yes.
19 Q And these Rules of Conduct contain this
20 sample form, Herbalife Membership Application
21 Agreement; correct?
22 A Correct.
23 Q Are they bound by the provisions in terms of
24 that Herbalife Membership Application and Agreement in
25 the Rules of Conduct or are they bound by the

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1 Herbalife Membership Application Agreement that they
2 signed?
3 MR. CATLETT: Form. Foundation.
4 MR. DROOKS: Form. Foundation. Legal
5 conclusion.
6 BY MR. MARK:
7 Q If you know.
8 A I am back to -- I don't know how to answer
9 that question since I am not a lawyer.
10 Q Okay. And if there is a conflict between
11 the application that they signed and the application
12 that is incorporated in these Rules of Conduct, which
13 one controls, if you know?
14 MR. DROOKS: Objection. Form.
15 MR. CATLETT: Foundation.
16 THE WITNESS: I don't know.
17 BY MR. MARK:
18 Q Are sponsors required to train downline
19 distributors about the Rules of Conduct?
20 A Yes, they are.
21 Q That is an obligation under the Rules of
22 Conduct?
23 A Yes.
24 Q And how does that occur?
25 A Training can occur different ways from the

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<p style="text-align: right;">Page 149</p> <p>1 sponsor to the member, whether it is face-to-face</p> <p>2 training, you know, virtual training between them.</p> <p>3 Q Does Herbalife monitor whether or not that</p> <p>4 training occurs?</p> <p>5 And I mean specifically the training with</p> <p>6 respect to updates to the Rules of Conduct.</p> <p>7 MR. CATLETT: Form.</p> <p>8 BY MR. MARK:</p> <p>9 Q If you know.</p> <p>10 A We would look into any issues reported.</p> <p>11 Q Okay.</p> <p>12 A If a downline made us aware that their</p> <p>13 sponsor is not providing them with training, then -- I</p> <p>14 think you used the word "monitor," and actually, we</p> <p>15 would inquire about that sponsor's business activities</p> <p>16 and how they are training their downline.</p> <p>17 Q Okay. But absent notification from a</p> <p>18 downline member that their sponsor is not providing</p> <p>19 him or her training as to updates in the Rules of</p> <p>20 Conduct, is there any other way in which Herbalife</p> <p>21 monitors training?</p> <p>22 A Yes.</p> <p>23 Q Can you tell me about that?</p> <p>24 A Training between the company and the</p> <p>25 distributor, but training between a distributor and</p>	<p style="text-align: right;">Page 151</p> <p>1 the court reporter be relieved of</p> <p>2 her obligation to maintain the</p> <p>3 original. The original will be</p> <p>4 sent to me.</p> <p>5 "Ms. Ramirez will review it.</p> <p>6 We will provide you with any</p> <p>7 errata. She will sign it under</p> <p>8 penalty of perjury without benefit</p> <p>9 of a notary.</p> <p>10 "I will provide the original</p> <p>11 to you. You will maintain it for</p> <p>12 all purposes. File it with the</p> <p>13 court, as needed or appropriate.</p> <p>14 "If the original is lost or</p> <p>15 misplaced, a certified copy can be</p> <p>16 used for all purposes. And if the</p> <p>17 original is not timely signed, you</p> <p>18 can use an unsigned, certified copy</p> <p>19 for all purposes.</p> <p>20 "And I understand you have a</p> <p>21 motion pending. So if you want to</p> <p>22 expedite the transcript, you can do</p> <p>23 that. We will make every effort to</p> <p>24 have Ms. Ramirez review it and sign</p> <p>25 it within 10 days of receipt.</p>
<p style="text-align: right;">Page 150</p> <p>1 their downline?</p> <p>2 Q Yes.</p> <p>3 A Not that I am aware.</p> <p>4 MR. MARK: Let's take three minutes. I</p> <p>5 might be done.</p> <p>6 THE WITNESS: Okay.</p> <p>7 MR. MARK: Thank you.</p> <p>8 THE WITNESS: Yeah.</p> <p>9 (Recess.)</p> <p>10 MR. MARK: I don't have any further</p> <p>11 questions.</p> <p>12 MR. DROOKS: Do you want to just put the</p> <p>13 same stipulation on the record that we did this</p> <p>14 morning?</p> <p>15 THE REPORTER: Yes, I can.</p> <p>16 MR. MARK: Okay. Thank you so much for your</p> <p>17 time. I really appreciate it.</p> <p>18 THE WITNESS: You're welcome.</p> <p>19 MR. DROOKS: Thank you.</p> <p>20 MR. MARK: I'd like to get rough drafts.</p> <p>21 (Whereupon, the following</p> <p>22 stipulation was agreed to by the</p> <p>23 parties and copied from the</p> <p>24 deposition of Silvia Ramirez:</p> <p>25 "MR. DROOKS: I propose that</p>	<p style="text-align: right;">Page 152</p> <p>1 "If that becomes a problem,</p> <p>2 for some reason, we will let you</p> <p>3 know.</p> <p>4 "MR. MARK: Well, yeah, so --</p> <p>5 so I would like to expedite the</p> <p>6 transcript.</p> <p>7 "Yeah. Obviously, you have</p> <p>8 the right to read the transcript</p> <p>9 and make any changes, et cetera,</p> <p>10 via an errata sheet. So I don't</p> <p>11 have a problem with that.</p> <p>12 "Obviously, I would like to</p> <p>13 expedite it in light of the fact</p> <p>14 that we have a response due in</p> <p>15 20 days, I think. That should be</p> <p>16 fine.</p> <p>17 "MR. DROOKS: So stipulated?</p> <p>18 "MR. MARK: Yeah. Yeah.")</p> <p>19 (The deposition concluded at 3:45 p.m.)</p> <p>20 * * *</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 REPORTER'S CERTIFICATION

2

3 I, Diana Janniere, a Certified Shorthand Reporter,

4 in and for the State of California, do hereby certify:

5

6 That the foregoing witness was by me duly sworn;

7 That the deposition was then taken before me at the

8 time and place herein set forth; that the testimony

9 and proceedings were reported stenographically by me

10 and later transcribed into typewriting under my

11 direction; and that the foregoing is a true record of

12 the testimony and proceedings taken at that time.

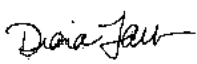
13

14 IN WITNESS WHEREOF, I subscribed my name

15 this 25th day of January, 2018.

16

17

18 

19 _____

20

21 Diana Janniere, CSR No. 10034

22

23

24

25

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1 DEPOSITION ERRATA SHEET

2 Page No. _____ Line No. _____ Change to: _____

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22 Page No. _____ Line No. _____ Change to: _____

23 _____

24 SIGNATURE: _____ DATE _____

25 ROXANE ROMANS

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1 DECLARATION ERRATA SHEET

2

3

4 Our Assignment No. J1131135

5 Case Caption: Rodgers

6 vs. Herbalife

7

8 DECLARATION UNDER PENALTY OF PERJURY

9 I declare under penalty of perjury that I

10 have read the foregoing transcript of my deposition

11 taken in the above-captioned matter or the same has

12 been read to me, and the same is true and accurate,

13 save and except for the changes and/or corrections, if

14 any, as indicated by me on the DEPOSITION ERRATA SHEET

15 hereof, with the understanding that I offer these

16 changes as if still under oath.

17 Signed on the _____ day of

18 _____, 2018.

19

20

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22 _____

23 ROXANE ROMANS

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1 DEPOSITION ERRATA SHEET

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24 SIGNATURE: _____ DATE _____

25 ROXANE ROMANS